(17,372.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 265.

FREDERICK A. BELL, PLAINTIFF IN ERROR,

vs.

MARY G. BELL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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a

Court of Appeals.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

Case.

Charles B. Wheeler, attorney for respondent, Buffalo.
Henry H. Seymour, attorney for appellant, Buffalo.

1

Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

Action for Divorce.
Summons.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service: that in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated December 10, 1894.

CHAS. B. WHEELER,
Plaintiff's Attorney.

Office and post-office address, No. 117 Erie Co. Savings Bank building, Buffalo, N. Y.

2

Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

The complaint of the above named plaintiff respectfully shows, that on the 24th day of January, 1878, the plaintiff and the above-named defendant were married, at Bloomington, in the State of Illinois.

That this plaintiff is a resident of the State of New York.

And this plaintiff further alleges, upon her information and belief, that since said marriage was contracted and on and during the month of April, 1890, the defendant committed adultery with one May Martin, in the city of Buffalo, State of New York, at a certain hotel known as "The Genesee" house or hotel.

That during the month of May, 1890, at said Genesee house or hotel, in said city of Buffalo, in the State of New York, the defendant committed adultery with said May Martin, and that said defendant at various times during said months of April and May, 1890, committed adultery with said May Martin.

That at various dates, and during the years 1889 and 1890, the said defendant committed adultery with the said May Martin at a house known as No. 60 Irving place, in the city of Buffalo, in the State of New York.

That at various times and dates during the years 1883, 1884, 1885, 1886, 1887 and 1888, the said defendant committed adultery with the said May Martin, at the house commonly known as No. 191 Franklin street, in the city of Buffalo, in the State of New York.

3 That during the years 1883, 1884, 1885, 1887, 1889, 1890 and 1891, the said defendant was living in adulterous intercourse with the said May Martin, at the said city of Buffalo.

That during the year 1891, at the said Genesee house or hotel, in the said city of Buffalo, N. Y., the said defendant at various other times committed adultery with various other women, whose names are unknown to this plaintiff.

That the various acts of adultery hereinbefore set forth and charged, were committed without the consent, connivance, privity or procurement of this plaintiff.

That five years have not elapsed since the commencement of such adulterous intercourse was discovered by the plaintiff, and that such adulterous intercourse between the said defendant and the said May Martin was begun, and was continued without the consent, connivance, privity or procurement of the plaintiff, and that the plaintiff has not voluntarily cohabited with the defendant since the discovery thereof.

That as this plaintiff is informed and believes, and alleges the fact to be, the said defendant is a man of large means, and is possessed and the owner of a large estate of real and personal property, to the amount and value of several hundred thousand dollars, and is in the possession and enjoyment of a large annual income.

That this defendant has not in any way contributed toward the support of this plaintiff for upwards of eleven years.

That there have been no children born of the marriage of this plaintiff and the said defendant.

Wherefore, the plaintiff prays judgment, divorcing the said
4 plaintiff and the said defendant and dissolving the said marriage, and that the court may require said defendant to provide suitably for the support of this plaintiff, and that the plaintiff may have temporary alimony and the costs of this action, and for such other or different relief as may be proper.

CHAS. B. WHEELER,
Plaintiff's Attorney,
117 *Erie Co. Savings Bank, Buffalo, N. Y.*

STATE OF NEW YORK, }
County of Kings, City of Brooklyn, } *ss:*

Mary G. Bell, being duly sworn, deposes and says that she is the plaintiff named in the foregoing complaint. That she has read said complaint and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated

to be alleged on information and belief, and as to those matters she believes it to be true.

MARY G. BELL.

Sworn to before me this 10th day of December, 1894.

CHARLES J. SANDS,
Notary Public, Kings County, N. Y.

5 Supreme Court, Erie County.

MARY G. BELL
against
FREDERICK A. BELL.

The said defendant, by Henry H. Seymour, his attorney, answering the complaint herein, alleges by his amended answer:

Admitting the marriage in said complaint alleged, denies each and every other allegation contained therein. And for further defense the said defendant alleges that at the times hereinafter mentioned the court of common pleas of Jefferson county, of the State of Pennsylvania, was a court of general jurisdiction duly created by the laws of that State. That on or about the 9th day of April, 1894, the defendant commenced an action in said court against said plaintiff for the dissolution of his said marriage with said plaintiff *a vinculo matrimoni*, by the issue of summons, which summons and notice or the process, by virtue of which by the laws of the State of Pennsylvania jurisdiction is obtained over the defendant in actions at law in said State, was duly served upon the plaintiff herein, and the said court of common pleas of Jefferson county had jurisdiction over the said plaintiff herein, as the defendant in that said action, or the pendency of which said action the plaintiff herein had personal and timely notice. That the hearing upon said action or the trial thereof was held in Brookville, in said county of Jefferson, in said State of Pennsylvania, on the 19th day of December, 1894, and such proceedings in said action were thereupon had; that said
6 court heretofore, on the 8th day of January, 1895, duly adjudged and decreed that the marriage of the parties hereto in this complaint alleged be dissolved, and said defendant recovered judgment in said court against the plaintiff herein, the said defendant herein, dissolving said marriage, and by a judgment and decree of the said court of common pleas of the county of Jefferson, and State of Pennsylvania, the marriage alleged in the complaint herein between the parties hereto was heretofore dissolved.

II.

And for a second defense and counter-claim the defendant alleges that on or about the 24th day of January, 1878, the defendant and said plaintiff were married at Bloomington, in the State of Illinois.

That the plaintiff and defendant were at the time of the commission of the first act of adultery hereinafter mentioned residents of this State.

And this defendant alleges, upon information and belief, that during the month of June, 1882, at the then residence of the plaintiff herein and this defendant, viz., number 641 Delaware avenue, in the city of Buffalo, this State, the plaintiff herein, Mary G. Bell, committed adultery with one Edward M. Bell. And defendant further alleges that between the first day of December, 1894, and the first day of April, 1895, said plaintiff, Mary G. Bell, at various times committed adultery in the cities of New York and Brooklyn with a certain man, whose name is unknown to defendant.

That there is no issue of said marriage of the said plaintiff and defendant, and that said defendant has not voluntarily cohabited with the plaintiff since the discovery of such adultery, and
7 that the same was committed without the consent, connivance, privity, or procurement of this defendant, and that five years have not elapsed since the discovery by the defendant of said adultery.

Wherefore, the defendant prays judgment, dissolving the said marriage between the defendant and plaintiff, and for such other relief as may be proper, besides the costs of this action.

HENRY H. SEYMOUR,
Defendant's Attorney, 11 *and* 12 *Hayen Building, Buffalo.*

NEW YORK COUNTY, *ss:*

Frederick A. Bell, the above-named defendant, being duly sworn, says that he has read the foregoing amended answer and knows the contents thereof; that the same is true to the knowledge of deponent, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

F. A. BELL.

Sworn to before me this 3d day of April, 1895.
H. M. FLANNERY, No. 188,
Notary Public, New York County.

8 Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

The plaintiff above named, for her reply to the alleged counterclaim of the defendant, set forth in the defendant's amended answer in this action, denies that in the month of June, 1882, or at any other time, at No. 641 Delaware avenue, in the city of Buffalo, or at any other time or place, this plaintiff committed adultery with one Edward M. Bell, or with any other person.

This plaintiff, further replying to said answer, denies, between the first day of December, 1894, and the first day of April, 1895, this plaintiff at various times committed adultery in the cities of New York and Brooklyn, with a certain man whose name is unknown

to the defendant, and this plaintiff denies that she ever at said times, or any other times, committed adultery with any man whosoever.

Second. And said plaintiff, further replying to said answer, alleges that she has no knowledge or information sufficient to form a belief as to whether or not the court of common pleas of Jefferson county, in the State of Pennsylvania, was or is a court of general jurisdiction, duly created by the laws of the State of Pennsylvania.

This plaintiff further alleges that she has no knowledge or information sufficient to form a belief as to what proceedings, if any, were had in said court by said defendant against this plain-
9 tiff, for the dissolution of his said marriage with this plaintiff, or as to whether or not any summons was ever issued out of said court against this plaintiff, or whether or not the hearing upon said action, or the trial thereof, was held in Brookville, in said county of Jefferson, on the 19th day of December, 1894, or whether or not on the 8th day of January, 1895, the said court purposed to render or enter any judgment dissolving the marriage between the plaintiff and said defendant.

This plaintiff, however, denies that any process whatever in said action, has been ever served on this plaintiff.

This plaintiff further alleges that she never was or ever became a resident or citizen of the State of Pennsylvania, and upon her information and belief alleges that said court of common pleas of Jefferson county, of the State of Pennsylvania, never had or obtained any jurisdiction whatsoever over this plaintiff, and never had nor acquired any jurisdiction, power, right or authority to make or render any judgment dissolving the marriage between this plaintiff and said defendant, and that any proceedings taken or judgment rendered in any such action was and is null and void, and of no force and effect.

Said plaintiff, further replying, alleges, upon her information and belief, that the said defendant never was or became a resident or citizen of the State of Pennsylvania, but that at all the times in the complaint herein mentioned, and at the time of the commencement of this action, was and continued to be a resident and citizen of the State of New York, and that any pretended proceedings taken by such defendant in said court were taken by said defendant for the purpose of evading the laws of the State of New York,
10 and were a fraud upon the rights of this plaintiff and upon the laws of the State of New York and of the State of Pennsylvania.

Wherefore, the plaintiff demands that said answer be dismissed.

CHAS. B. WHEELER,
Plaintiff's Attorney, No. 117 *Erie Co. Savings Bank Building, Buffalo, N. Y.*

STATE OF NEW YORK, } ss.:
County of New York, }

Mary G. Bell, being duly sworn, deposes and says, that she is the plaintiff named in the above-entitled action; that she has read the

foregoing reply and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information, and as to those matters she believes the same to be true.

MARY G. BELL.

Sworn to before me this 6th day of April, 1895.

D. C. WHEARTY (223),
Notary Public, New York County.

11 Supreme Court, Erie County.

MARY G. BELL
against
FREDERICK A. BELL.

The following is the bill of particulars, upon information and belief, of the time and places of the acts of adultery alleged in the amended answer herein, of the said plaintiff, Mary G. Bell, between the first day of December, 1894, and the first day of April, 1895, viz: on or about December 25th, 1894, on or about January 1st, 1895, on or about March 24th, 1895, all at 101 Hancock street, in the city of Brooklyn, New York, and that said acts of adultery were committed by said Mary G. Bell with a man named George D. Barney.

HENRY H. SEYMOUR,
Defendant's Attorney, 11 and 12 Hayen Building, Buffalo.

To Charles B. Wheeler, plaintiff's attorney.

ERIE COUNTY, *ss:*

Frederick A. Bell, the above-named defendant, being duly sworn, says the foregoing is a correct bill of particulars of the time and places of the said acts of adultery alleged in the amended answer herein.

F. A. BELL.

Sworn to before me this 12th day of April, 1895.

F. E. EUSTAPHIEVE,
Notary Public.

12 At a special term of the supreme court, held at the city and county hall in the city of Buffalo, on the 9th day of May, 1895.

Present: Hon. Manly C. Green, justice.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

This cause being on the calendar of this court, and the attorneys for the respective parties having appeared in open court and consented to a reference, and the court having selected and named

Spencer Clinton, Esq., a counselor of this court, as a referee to hear, try and determine the issues herein:

Now, therefore, it is hereby ordered, that this action be and it hereby is, referred to said Spencer Clinton to hear, try and determine the same.

Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

The undersigned was appointed a referee in this action by an order of this court made on the ninth day of May, 1895, to hear, try and determine the issues herein.

Both parties to the action appeared before me, in person and
13 by attorney, and having taken the oath of office required by law, I heard the testimony and evidence submitted by them and the arguments of their respective counsel thereon. From the evidence the following facts are found by me:

I. That the plaintiff was married to one Benjamin Bruce, Jr., at Bloomington, Illinois, on the 10th day of January, 1871; that on the 25th day of March, 1874, in an action in the circuit court of Cook county, Illinois, brought by said Benjamin Bruce, Jr., against the plaintiff under her then name of Mary Gridley Bruce, a judgment of divorce was granted, adjudging that the bonds of matrimony theretofore existing between said Benjamin Bruce, Jr., and the plaintiff be and the same were thereby dissolved.

II. That subsequently and on the 24th day of January, 1878, the plaintiff and defendant were married at Bloomington, Illinois, and went to Rochester, N. Y., to reside.

III. That a year or two later the plaintiff and defendant came to Buffalo, N. Y., to live. During the latter part of their married life they resided on Delaware avenue in this city. Their residence was a very fine one and they kept horses, carriages, coachman and servants.

IV. In August, 1882, the plaintiff went to Bloomington, Illinois, on a visit to her mother. In her absence the defendant packed up her wearing apparel and other property in trunks and had them removed to the stable preparatory to sending them to the plaintiff at Bloomington. In September the plaintiff, accompanied by her mother, returned to the defendant's house, stayed for three of four days and then left, accompanied by her mother, for Bloomington,
Illinois, and since then the plaintiff and defendant have not
14 lived together. The plaintiff has remained at Bloomington, living with her mother. She has crossed the Atlantic three times, on one occasion remaining thirteen months. Each time she returned to Bloomington. On the 14th day of November, 1894, the plaintiff left Bloomington, with her mother, going to 101 Hancock street, Brooklyn, N. Y. On her way she visited Mr. and Mrs. Henry C. Jewett, at Buffalo, N. Y., and while there told Mrs. Jewett that she was on her way to Brooklyn and intended to bring an

action against the defendant for a divorce. She lived at 101 Hancock street, Brooklyn, till March 28th, 1895, when she took up her residence at the Cambridge hotel, corner of 23d street and Fifth avenue, New York city. She has not returned to Bloomington, Illinois, since then. During all of this period the plaintiff has claimed her residence as being at Buffalo, N. Y., and in a deed she executed with him, a deed of certain lands wherein she is described as of Buffalo, N. Y.; she has never resided in Pennsylvania.

V. This action was begun on the 22d day of December, 1894, by the personal service of the summons and complaint on the defendant at the city of Buffalo, N. Y., the plaintiff then being a resident of the State of New York.

VI. That on the 8th day of January, 1895, the court of common pleas of the county of Jefferson, in the State of Pennsylvania, in an action pending therein, brought by the defendant, Frederick A. Bell, against the plaintiff, Mary G. Bell, for a divorce on the ground of her desertion of him, rendered its judgment or decree against the plaintiff dissolving their marriage for her desertion of the defendant. That desertion, under the laws of the State of Pennsylvania, was a ground for dissolving marriage.

15 VII. That the subpœna in said action, by which it was commenced according to the law of Pennsylvania, was not personally served upon the defendant in that action, who is the plaintiff in this action, but she was served by publication according to the laws of Pennsylvania. She did not appear in that action in person or by attorney, and judgment was rendered against her by default. She received through the mail a printed copy of the subpœna and of the notice of the examiner that he would attend to the duties of his appointment at his office on the 4th day of December, 1894, at his office on Main street, in the borough of Brookville, Jefferson county, Pennsylvania. That at the time of the rendering of the judgment the plaintiff in this action was a resident of the State of New York.

That on the 31st day of January, 1894, the defendant and his sister, Katherine B. Lewis, presented a petition to the surrogate of Erie county for the probate of the will of Juliette Bell, their mother. That in such petition the defendant is described as residing in the county of Erie, New York, and his residence is given as Buffalo, N. Y. The petition is sworn to by the defendant and his sister.

VIII. The defendant was not a *bona fide* resident of the State of Pennsylvania at the time of the beginning of the action to dissolve the marriage between the plaintiff and defendant, nor at the time of the making of the judgment or decree therein.

IX. The plaintiff inherited a fortune of about $100,000 from her father, and it is now about the same amount.

X. That the defendant possesses property to the amount of
16 $300,000 situate in this State and Pennsylvania. That the income from most of the Pennsylvania property varies according to the demand for, and price of coal, as it is based upon coal mines and mining rights. There was no dividend paid last year on the stock of the Bell-Lewis Mining Company. That the

plaintiff has an estate separate from that of her husband of about $100,000.

XI. That the defendant committed adultery with one Mrs. Martin in the month of April, 1890, at the Genesee hotel in the city of Buffalo, New York. That Mrs. Martin lived for a week in the defendant's rooms in the hotel, in which rooms there was but one bed.

XII. That on another and different occasion, in the month of May, 1890, the defendant committed adultery with Mrs. Martin in her room in the Genesee hotel in the city of Buffalo, New York.

XIII. That these acts of adultery were committed without the consent, connivance, privity or procurement of the plaintiff.

XIV. That five years have not elapsed since the commission of said acts of adultery before the commencement of this action, and the plaintiff has not cohabited with the defendant since said adultery was committed.

XV. That the plaintiff did not commit adultery with one Edward M. Bell, nor with any other person at any time.

I find as conclusions of law that the plaintiff should have judgment against the defendant dissolving the marriage existing between the parties for the adulterous acts of the defendant.

II. That the defendant pay to the plaintiff for her support
17 and maintenance during her life the sum of three thousand dollars per annum, from the commencement of this action, payable quarterly.

I direct that judgment be entered accordingly, with costs to be paid by the defendant to the plaintiff.

(Signed) SPENCER CLINTON, *Referee.*

Dated June 8th, 1895.

Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

The defendant herein excepts to the findings of fact and the conclusions of law of the referee herein upon the trial of this action, and gives notice thereof as follows:

1. The defendant excepts to the fourth finding of fact and the whole thereof.

2. The defendant excepts to the fifth finding of fact and the whole thereof.

3. The defendant excepts to the seventh finding of fact and the whole thereof, and especially to the finding that at the time of the rendering of the judgment the plaintiff in this action was a resident of the State of New York.

4. The defendant excepts to the eighth finding of fact and the whole thereof.

5. The defendant excepts to the tenth finding of fact and the whole thereof.

18 6. The defendant excepts to the eleventh finding of fact and the whole thereof.

7. The defendant excepts to the twelfth finding of fact and the whole thereof.

8. The defendant excepts to the thirteenth finding of fact and the whole thereof.

9. The defendant excepts to the fourteenth finding of fact and the whole thereof.

10. The defendant excepts to the ruling contained in the first conclusion of law and the whole thereof.

11. The defendant excepts to the ruling contained in the second conclusion of law and the whole thereof.

12. The defendant excepts to the ruling that judgment be entered in favor of the plaintiff against the defendant, with costs.

HENRY H. SEYMOUR,
Attorney for Defendant, 11 *and* 12 *Hayen Building, Buffalo.*

To Charles B. Wheeler, Esq., attorney for plaintiff, Buffalo:

Take notice, that the foregoing exceptions are taken from the findings and rulings of the referee, as contained in the decision of said referee in the above-entitled action, and that said exceptions are this day filed in the clerk's office of Erie county.

Dated July 5th, 1895.

HENRY H. SEYMOUR,
Defendant's Attorney, 11 *and* 12 *Hayen Building, Buffalo.*

19 Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

Memorandum of Opinion.

I have given this case very careful consideration upon the law and the facts.

The defendant was a resident of New York and the plaintiff a resident of Illinois when they married in the latter State in 1878. Subsequently they came to Buffalo, where they resided until their separation in 1882, when the plaintiff returned to Illinois. Subsequently she returned to this State with the avowed purpose of bringing this suit for divorce. While domiciled here the defendant brought an action in a court of Pennsylvania for a divorce from the plaintiff, on the ground of her desertion of him. The defendant claimed a residence in Pennsylvania, but such residence could have been but nominal, as he at the same time claimed to be a resident of this State in proceedings in a surrogate's court here. No evidence was offered to show that the defendant actually changed his domicile from this State to that of Pennsylvania. The plaintiff had notice of the action, but did not appear in it or take any part

in it. In that action a decree was rendered dissolving the marriage between the parties, for the desertion of the defendant by the plaintiff. That decree was offered in evidence before me.

It can have no force in changing the relations of the parties. The uniform course of decisions by the courts of our State forbid my giving any force to this decree.

20 The evidence of the commission of acts of adultery by the defendant with Mrs. Martin appears conclusive to me. The testimony of Annie Enright, a chambermaid at the Genesee, shows that Mrs. Martin, in April, 1890, passed a week in the defendant's rooms, taking her meals there and appearing in her night-gown. This is corroborated by the witness Barrett, who testifies that there was a woman there at Mr. Bell's rooms for a week or ten days.

The witness Enright also saw the defendant enter Mrs. Martin's room in the Genesee one Saturday night in May, 1890, and come out in the morning. He had not left the room when she went off duty at midnight.

This testimony is direct. It is weakened to a certain extent by the bias Annie Enright may have, because of having been accused falsely of stealing jewelry belonging to Mr. Bell, and by having brought an action against him for damage, which failed. The high character given Mrs. Wisner and Mrs. Martin by Dr. Lothrop detracts from it, and the testimony of Mr. Rodgers, keeper of the Genesee, that Mrs. Martin, when unaccompanied by Mrs. Wisner, always requested him to accompany her to Mr. Bell's rooms, and that he stayed there until she left.

But Mr. Rodgers was not asked about the time when Mrs. Martin stayed in the hotel, first in the defendant's rooms and afterwards with Mrs. Wisner. Nor did the defendant deny this evidence of the witness Enright, as the law permitted him to do. I can come to no other conclusion from the evidence than that the acts of adultery were committed as stated in my findings of fact.

The counter-charge made by the defendant is not sustained by the evidence. The testimony of Mr. Edward M. Bell standing alone is not sufficient. The testimony relied upon to corroborate it does not fill the requirement of the law. Edward M. Bell fixed the

21 date as being the last of May or first of June. At that time plaintiff was not in Buffalo.

There are other minor contradictions which require that his testimony should be corroborated fully within the rules of law before the plaintiff should be found guilty of being unfaithful to her marriage vows. All the circumstances of this case require that the testimony of Mr. Edward M. Bell should be carefully weighed and that its corroboration should be upon some material point. The only corroboration is that he visited the house in Mr. Bell's absence; that Mrs. Bell was intimate enough with him to call him "Ned" and to accept his escort to the theater; that she was in good spirits upon occasion when they popped corn in the kitchen, and that on one occasion he spent the night at the house. This latter date is not fixed and the testimony goes to show that it was not at the time Mr. Edward M. Bell fixes as the time when the offense was

committed. I do not regard this as sufficient corroboration to entitle me to accept his testimony in view of the explicit denial of the plaintiff, and I am constrained from all the evidence to find that the plaintiff is not guilty of the offense charged in the answer.

The remaining question to be passed upon is that of alimony. The facts established before me are comparatively meager. The plaintiff is apparently in good circumstances; her fortune independent of her husband is about $100,000. Mr. Bell's fortune has not been established very definitely. It appears that he received from his father's estate—

The sum of	$140,414 35
From his mother's estate	61,150 00
He has stock in the coal company	312,500 00
Merchandise in partnership	40,000 00
	$554,064 35

22 What part, if any, of the stock in the coal company represents the amount, or any part of it, received from his father's estate does not appear. It does appear that last year the firm or company suffered a loss of $200,000. He receives rents to the amount of $7,200 from Pennsylvania coal interests, but how these enter into the copartnership dealings of Bell & Lewis, if at all, does not appear. From all the testimony I am inclined to estimate his fortune at $300,000, the greater part of it invested in coal-mining ventures. These interests are at present very much depressed and are necessarily at the mercy of the fluctuation of the business of the part of the country which they supply with coal. For this reason the fortune of the defendant should not be treated as one of a definite amount, producing a fixed income, when it is to be burdened with a fixed charge such as an allowance for alimony would be.

Looking, then, to the circumstances of both parties with a view to do equal justice to both, I am of opinion that three thousand dollars per annum should be paid the plaintiff for alimony.

Dated June 8th, 1895.

SPENCER CLINTON, *Referee.*

23 At a special term of the supreme court, held at the city and county hall, in the city of Buffalo, in the county of Erie, on the 24th day of June, 1895.

Present: Hon. John S. Lambert, justice.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

Upon reading and filing the report of Spencer Clinton, Esq., referee herein, heretofore appointed to hear, try and determine the issues in this action, which report bears date the 8th day of June, 1895, and all the papers and proceedings herein; after hearing

Charles B. Wheeler, Esq., counsel for the plaintiff, in support of this motion, and Henry H. Seymour, Esq., in opposition thereto:

On motion of Charles B. Wheeler, attorney for the plaintiff, it is ordered, that the said report of the said referee be and the same hereby is in all things confirmed, and that the plaintiff have judgment for the relief demanded in the complaint, in accordance with the directions of said report.

And it further appearing that said defendant intends to appeal to the general term of this court from the said judgment upon application of defendant's counsel, it is further ordered, that the execution of the judgment hereby authorized and directed, so far as the payment of alimony may be directed or provided therein, be stayed during the pendency of the said appeal to the general term, with leave to the defendant to again move at this court for a further stay in the event that the decision of the general term shall
24 be a-verse to said defendant, and necessary in order to protect his rights under the circumstances surrounding the case.

And it is further ordered, that if the defendant fails to diligently prosecute his said appeal, or take all the steps necessary to a decision thereof, that then the plaintiff may apply to this court for an order vacating the stay hereby given in reference to the payment of alimony.

Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant. } Judgment.

This action having been begun by the personal service of the summons and complaint in this action on the defendant, Frederick A. Bell, and the said defendant having appeared and answered said complaint, and the issues so framed having, by an order of this court dated the 9th day of May, 1895, been referred to Spencer Clinton, Esq., as sole referee, to hear, try and determine the same, and said issues having been tried before said referee, and the said referee having made and filed his report, bearing date the 8th day of June, 1895, in and by which report said referee found, among other things, that said defendant committed adultery with one Mrs. Martin, and that said plaintiff has not committed adultery with any one. And this court having, by an order of the Erie special term, dated the 24th day of June, 1895, confirmed said report and directed judgment to be entered accordingly:

Now, therefore, on motion of Charles B. Wheeler, Esq.,
25 attorney for the said plaintiff, it is ordered, adjudged and decreed, that the marriage between the plaintiff, Mary G. Bell, and the defendant, Frederick A. Bell, be dissolved, and the same is hereby dissolved, accordingly, for the adulteries of the said defendant, and the said parties are, and each of them is, freed from the obligations thereof.

And it is further ordered, adjudged and decreed that it shall be lawful for the said Mary G. Bell, the plaintiff, to marry again in

the same manner as if the said Frederick A. Bell, the defendant, was actually dead, but it shall not be lawful for the defendant, Frederick A. Bell, to marry again until the said plaintiff, Mary G. Bell, shall be actually dead, or until the further permission of this court, made pursuant to the statute in such case made and provided.

It is further ordered, adjudged and decreed, that the defendant, Frederick A. Bell, shall pay to the said plaintiff, Mary G. Bell, the sum of three thousand dollars ($3,000.00) per annum during the natural life of the said Mary G. Bell, as and for her support and maintenance, such payments to begin from the 22d day of December, 1894, and to be paid in quarterly installments of seven hundred and fifty dollars ($750.00) each, at the end of every three months.

And it is further ordered, adjudged and decreed, that said plaintiff recover of and from said defendant, Frederick A. Bell, the sum of four hundred and thirty-five dollars and ninety-four cents ($435.94), as and for her costs of this action, and that the plaintiff have execution therefor.

Judgment signed this 3d day of July, 1895.

GEORGE BINGHAM, *Clerk.*

26 Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

SIR: Take notice, that the defendant, Frederick A. Bell, hereby appeals to the general term of this court from the judgment of this court, which said judgment was entered in this action on the third day of July, 1895, in the office of the clerk of the county of Erie, and that the said defendant hereby appeals from the whole and every part of said judgment.

Dated August 1st, 1895.

Yours, etc.,
HENRY H. SEYMOUR,
Attorney for Defendant and Appellant,
11 *and* 12 *Hayen Building, Buffalo.*

To Charles B. Wheeler, attorney for plaintiff and respondent, and to the clerk of the county of Erie.

Supreme Court, Erie County.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

The parties and their counsel appeared before the referee, Spencer Clinton, at his office, in the city of Buffalo, on the 16th day of May, 1895. Mr. Charles B. Wheeler appeared as counsel for the plaintiff, Mr. Henry H. Seymour as counsel for the defendant.

27 EDWARD B. GRIDLEY, being duly sworn, testified:

I reside in Bloomington, Ill. Am a brother of Mrs. Bell, 41 years old; my sister is 44; I was present at the marriage of Mr. and Mrs. Bell, on January 24th, 1878, at Bloomington, Ill., at the residence of her father and mother, on Grove street. After their marriage they lived a year or two at Rochester, N. Y., then I think they went to Buffalo, where they lived on Delaware avenue. I remember the occasion of their separation; I remember Mrs. Bell going to Bloomington shortly before that; I think it was the year 1882; she stayed there a short time before she went back to Buffalo; she came for a visit and she received his letters and went back with mother to Buffalo; she returned to Bloomington a short time after that with her mother; she brought her trunk with her when she came home. After that Mrs. Bell lived in Bloomington with her mother up to the present time; during part of this time she has crossed the Atlantic three times; on one trip she was gone thirteen months; I forget how long she was gone the others; from that time she has not lived at all with Mr. Bell; I have not had any knowledge of his contributing to her support in any way; I remember when she went to Brooklyn; she left Bloomington with her mother on November 14th, 1894; she first went to 101 Hancock street, Brooklyn, and was there until March 28th, 1895; she then took up her residence at the Cambridge hotel, 33d street and 5th avenue; she has not been in Bloomington at all since November 14th, 1894; she never was a resident of the State of Pennsylvania; I have had charge of her property and her business matters, and charge of the payment of her taxes; I have made a yearly return to the assessors there during the ten or twelve years since her separation
28 from her husband, for the purpose of taxation of personal property, under her direction. Mrs. Bell has made declarations in reference to her residence, to me.

Q. State what those are?

Objected to by defendant's counsel as incompetent. Objection overruled. Defendant excepts.

A. Her residence was in Buffalo, N. Y.

Cross-examination by Mr. SEYMOUR:

Mrs. Bell returned to Bloomington in 1882, and with the exception of her trips abroad she lived there until November 14th, 1894; she has been abroad three times in that period; the first time she was abroad she remained thirteen months, the second time for nearly a year, and I think the other time was not quite so long; she paid her expenses on these trips out of her separate estate, left her by her father; at the time of her marriage to Mr. Bell she was a single woman; she had been married before to Benjamin Bruce, about ten years before her marriage to Mr. Bell; Mr. and Mrs. Bruce lived together between three and four years at Chicago.

Redirect examination by Mr. WHEELER.

By the REFEREE:

Q. During this period that Mrs. Bell was living in Illinois, did she, to your knowledge, execute any papers, deeds of conveyance, or anything of that kind in connection with the estate?

A. None that I remember.

Q. So you don't know how she described herself in any deed or paper that she executed?

A. I do.

Q. In what way did she describe herself?

A. As Mrs. F. A. Bell, Buffalo, N. Y.

Q. Invariably declaring that to be her residence?

A. Yes, sir.

29 Mr. SEYMOUR: I object to that and move to strike it out, on the ground that the papers themselves are the best evidence.

Objection overruled. Defendant excepts.

HENRY C. JEWETT, sworn, testified:

I live on my farm at Jewettville, N. Y.; I have known Mrs. Bell a number of years, after her separation from Mr. Bell; I remember that she visited at my house at Jewettville with her mother last fall, when she stayed four or five days; she left November 21st; she went to 101 Hancock street, Brooklyn; after that I saw her at the Park Avenue hotel, when she came to visit my wife for four or five days.

LUCY JEWETT, sworn, testified:

I am the wife of the last witness; I have known Mrs. Bell thirteen years; I remember when she visited me last fall at Jewettville; she stayed four or five days and left the 21st of November; she went to 101 Hancock street, Brooklyn; I have corresponded with her there; addressed letters to her there and received replies; I afterwards saw her in New York; she visited me at the Park Avenue hotel on my invitation. Her mother, Mrs. Gridley, was with her. I was acquainted with her while they lived on Delaware avenue; they kept horses and carriages and a coachman, and their house was a fine place; it was what I would call a luxurious home.

Cross-examination by Mr. SEYMOUR:

When Mrs. Bell visited me she told me she was going to Brooklyn; she said that she was going to stay with her relatives there, and that she was going to enter proceedings against Mr. Bell for a divorce.

30 FRANK J. DOYLE, sworn as a witness for the plaintiff, testified:

I live in Schenectady, and am employed by the General Electric Company as a winder. I was employed at the Genesee hotel, in this city as a porter, and afterwards as head hall man, under the

management of Rogers & Roy. It was about four years ago. I am a married man. I know Mr. Bell. I have no recollection of ever seeing Mrs. Bell before. I had occasion to answer calls from rooms. Mr. Bell was living there at the time. I remember the rooms he occupied. They were at the extreme end of the hall, on the second or third floor. He had a suite of rooms. I was there about a year. I remember one occasion when I saw a woman in his rooms. A woman called and asked to be shown to Mr. Bell's room. I went to Mr. Bell's room and told him. She afterwards left, and three or four days after I admitted her; she walked by me, was taken up in the elevator, and about two o'clock in the afternoon I saw this lady come downstairs and go out. About a week after this I saw this same party come back. I opened the door for her; she came in and walked upstairs. It was in the afternoon. I followed, and she went to Mr. Bell's room, and knocked on the door. I was at the other end of the hall. She was not admitted. She waited there two or three minutes, and then she came downstairs and sat in the parlor, perhaps twenty minutes. In the meantime Mr. Bell came in, and walked or rode upstairs. I went upstairs and saw this lady come out of the parlor and go to third floor. She walked down to end of hall and entered Mr. Bell's room. I did not see her come out. She was about average height and fair complexion. I would call her a blonde. I do not know her name. On another occasion I answered the bell from Mr. Bell's room in the
31 morning about eight o'clock, or nine; I went to the door; it was ajar; I knocked, but no one answered. I saw no one, but I heard some person speaking, and I supposed it was Mr. Bell, and I went in and turned to the right, his apartments were around to the right, and I said, "Did you ring?" and a female voice said, "Is that you, Fred?" I said, "No, it is one of the bell boys." There was no reply. So I went back to the door, and met Mr. Bell at the door. He was not fully dressed, and I judge was just out of the toilet-room, and he gave orders for some wants and went into the room. I went after them. I think they were drinks of some kind. I brought them up and served them, and saw a woman sitting in one of the outside rooms, near the closet, with a wrapper, or morning gown, on. She was not dressed in street costume. I saw this lady come out that afternoon about four o'clock. She was the same woman I had seen on prior occasions. On no other occasion have I seen this party in Mr. Bell's room, but I have seen her come in frequently and go upstairs, and remain upstairs some time. I don't know where she was.

Cross-examination by Mr. SEYMOUR:

The cross-examination of this witness showed that he had been employed at the Genesee as head hall boy and head hall man for two years, and before that he was employed a year and a half at the Mansion house as a porter.

I first heard about this action about three weeks or a month ago, from a representative of Mr. Wheeler's, by the name of Futterer, who used to be bell boy.

EDWARD B. GRIDLEY, recalled by the defendant, and cross-examined by Mr. Seymour:

At the time of the marriage of the parties hereto, in 1878,
32 Mr. Bruce, the first husband of the plaintiff, was living; my father died January 21st, 1881; I am the trustee of the plaintiff's separate estate now; my father did not leave an estate of half a million; I should think that that estimate is about one hundred thousand dollars out of the way; the greater part of the estate was farm lands near the city of Bloomington, which have increased somewhat in value; my father left four children, who inherited the estate in about equal shares. Under the laws of Illinois, if a resident makes a return to the assessors that they are not residents of that State, it exempts them from the tax upon their personal estate there; the plaintiff has lived in Bloomington since 1882, with the exception of the time she has been abroad; when she has gone abroad she has gone from Bloomington, and when she has returned from Europe, she has returned to Bloomington.

MARIA TOOMEY, sworn, testified for the plaintiff:

I live in Buffalo and was employed in the family of Mrs. Bell, as a domestic, when they lived at 641 Delaware avenue; I was employed there in May, 1882, as second girl; I remember the time that Mr. and Mrs. Bell separated; I remember Mrs. Bell's going to Bloomington; she went first to see her mother; she returned in a week or so; when she went she left a note for Mr. Bell, saying she was going to her mother's. While she was at Bloomington he packed up Mrs. Bell's things and sent them out to the barn; and some men came and packed up her piano; after these things were packed up Mrs. Bell came back with her mother; she stayed about three or four days and then left.

Cross-examination by Mr. SEYMOUR:

I think it was about the first part of September when she came back; I supposed she had been gone about a week or so, so
33 when she went the first time, it was about the end of August; she left a note for Mr. Bell, for to give it to him, to tell him she was going; I gave it to Mr. Bell; he was away when she left; I don't remember how many days he had been away, but I guess he came back about the second day after she went. When she left she said to me that she was going to her mother's, and when Mr. Bell came back to give him this note. About a week after that she came back with her mother. Mr. Bell was there. She stayed three or four days, as near as I can remember; then she and her mother went away together. Mrs. Bell bade us good-bye; she shook hands with us and said good-bye.

Q. Did she say she was coming back?

A. She never said she was coming back.

Q. Did she say she was coming back?

A. I don't remember she made use of them words. We knew she was going away.

Q. For good?
A. Yes, sir.
Q. Why?
A. I saw her things all packed up, and, of course, I knew by her actions she was going away.
Q. Do you recall whether she said anything to you about going away for good?
A. I guess she did. We all knew it, anyway, that she was going away for good.
Q. Did you know from her actions and conduct?
A. Why, certainly, I do believe Mrs. Bell told us she was going away, and we could see it ourselves.
Q. See if you can remember whether she did tell you that she was going away for good?
A. That is my recollection. That I knew distinctly that she was going away for good.
Q. That she told you?
A. Yes, sir.

Redirect by Mr. WHEELER:

Mr. Bell packed up her things before she came back, and moved them out into the stable.

34 ANNIE ENRIGHT, sworn for plaintiff, testified:

I live with Mrs. A. P. Wright now. Prior to that time I lived at Mrs. Jewett Richmond's. I was a chambermaid at the Genesee hotel and had charge of the third floor. I know Mr. Bell. He boarded at the hotel at that time. I was there a year. Mr. Bell had a suite of rooms on the third floor. I had care of his rooms as chambermaid. Mr. Bell had a front parlor, a back parlor, a bedroom, a bath-room and a closet. They were down at the end, towards Pearl street, at end of hall. I left there five years ago in June. He had just one bed in his suite of apartments. I know a woman known as Mrs. Martin. She called herself Mrs. Martin. I know a woman who calls herself Mrs. Wisner. I remember a time when Mrs. Martin came to the hotel and stayed in Mr. Bell's rooms. The first time I ever saw her come there was in April, the last April I was there. She and Mrs. Wisner came there, and the bell boy came up to my room and wanted the key of Mr. Bell's room to let two women in his room. I did not give it to the bell boy. Mr. Bell was in there at the time. I went downstairs and met them on the third floor. She said it was all right, she was Mr. Bell's friend, and Mrs. Wisner said she was Mr. Bell's cousin, and I should not feel afraid to give her the key. I said "No," and she says, "Come and let us in." I went down, and before that she said Mr. Lewis had sent her a note to give to Mr. Bell (Mrs. Martin said) so I went on down. The door was locked and I could not get in. She called, but got no answer, and she sat on a chair, and she said she would watch, and the next bell boy that would come up she would get in. I did not see any more of her until the next morning. She called me to the door the next morn-

ing. I did not see her go in. I went off about my business.
35 She said she was going to set there until a bell boy would come up and she would get in. The next morning at the door she called me, and wanted some towels, and I got her the towels, and then she told me how she got in. When she came to the door she was dressed in a night-gown. After that I could hear her in the room but could not see her. She stayed in the room just one week. I saw her go out. I was called and went down, and Mr. Bell said he was leaving his room, and that he wanted his bed all changed with clean linen. Then afterwards Mr. Bell went in, and he came out and linked arms, to the elevator, with Mrs. Martin, walked arm in arm to the elevator, and gave me directions to change the bed. I went into the room and done my work. I never saw the woman before. She is a low-set, light person. Mrs. Wisner was a small, little low person, with bright blue eyes and dressed in black. In May she came to stay in rooms in front of elevator. They stayed a couple of weeks at that time. Mrs. Martin never went down to her meals that I know of; I always seen the tray brought up, and meals taken in. She was there in April and in May. She and Mrs. Wisner came back to board in these other rooms. They had two rooms in the same hall as Mr. Bell's were. His were at the end of the hall and theirs opposite the elevator. On the second occasion I saw Mr. Bell go into Mrs. Martin's rooms. It was Saturday evening when I was on watch. I think I was on watch from three to twelve. I saw him go into her room between eight and nine when I was in the hall. I did not see him come out that night. On Sunday morning a bell boy was looking for—some one rang him. I was in the next room with Minnie Conners, and he came to see, or wanted to know who was ringing him. Minnie said "In the next room." This was the forenoon
36 of Sunday. Mr. Bell came to the door and said they were not ringing. I saw him come out of the room that day. Three or four of us were sitting on the step and we just happened to see him go down to his own room. I saw Mrs. Martin on another occasion go once in his room in the evening, going down herself. Yes, I seen her with Mr. Bell, going down to his room, a good while after that. They went in. I did not see her come out. Mrs. Martin was in there once while I was doing his work. She came and looked through his bureau drawers, looked over his closet. There were night shirts on the box she said should be in the drawers, and she fixed them in the drawers. I don't remember seeing her in his room after that day. I saw other women go in his room. It was in March; in February I seen different faces going out. I did not see the people going in, but I saw them going out, more than I did going in. I saw them going in and coming out as I was doing my work from one room to another. There was one woman, she was a light blonde, and real light. I saw her come out, and I saw her on the floor early in the morning when I went to my work. One of the bell boys run up. They had a great deal of loud talking and he came out and said they had lots of fun. His name was Thompson. He went downstairs. Mr.

Rogers came up and rapped at the door, but could not get in. Then the elevator boy came up with a note and they left.

Q. Was there any other?

A. Well, there was a light woman in 284. If I am not mistaken in the number, the next room to Mr. Bell's. She came there occasionally, and used to make inquiries about him. I saw her go into his room. The last time she was there she came up and said she wanted to go into Mr. Bell's room. She walked in. She occupied the room right next to Mr. Bell's three or four times. I took care of her room. In June I found a night-dress in Mr.
37 Bell's room, the very same I had seen in her room. I found it on his bed, and a little silver flask that had been in her room. I saw it several days in her room.

Cross examination by Mr. SEYMOUR:

At the time Mr. Bell came out of the room arm in arm with the woman that I call Mrs. Martin, was, as near as I can remember, on Wednesday; she came on a Wednesday and I think she left Wednesday about ten o'clock in the morning, at end of week; afterwards, when Mrs. Martin and Mrs. Wisner came there, they took a suite of rooms together down by the elevator; they had a large and small bed-room; I was there on watch one night and saw Mr. Bell come along there, in the early evening; I was coming up about my business around by the elevator; I was on watch in the lower hall on the first floor; I am the Annie Enright that was arrested at the Genesee.

Q. By the police force?

A. No, by Mr. Bell; I had his own words for it.

Q. You were arrested by Mr. Bell?

A. Yes, sir.

Q. What for?

A. For, well, as he said, I stole a thousand dollars' worth of jewelry and a pair of boots and an umbrella, as near as I can remember.

Q. Were you arrested by an officer?

A. Quinn, I think they called the detective that came there.

Q. Were you arrested by Mr. Quinn?

A. I don't know whether I was arrested, he was——

Q I don't mean to suggest that you were arrested. I ask you if you were not taken in charge. You had trouble there with Mr. Bell?

A. Yes, sir.

Q. And it was stated that Mr. Bell had lost valuable jewelry, wasn't it?

A. Yes, sir.

Q. And he thought somebody had taken it, didn't he?

A. He thought I had taken it.

38 Q. He was mistaken, wasn't he?

A. Yes, sir. I went with Officer Quinn to the station I was kept there, as near as I can remember, from half past three

or four until the next morning, when I was allowed to go; I afterwards sued Mr. Bell for having me arrested and accusing me of taking all of his jewelry and stolen goods; in this action I claimed ten thousand dollars' damages; it was brought in the supreme court, and it was tried twice; the first time the jury did not agree and the second time the court directed a nonsuit.

Q. As a result of the lawsuit, your feelings toward Mr. Bell are not very friendly, are they?

A. Well, I don't think he acted very gentlemanly toward me.

Q. Your watch lasted from what hours to what hours?

A. Well, from three to twelve that night, if I am sure, or else from six to twelve; it is a good while ago, and I am trying to remember it as near as I can; the duties of chambermaid on watch are to sit in a chair; they change the beds and are supposed to go around and change the rooms; when they are on watch and not changing the rooms they are usually sitting at some one point; my station was the same as all the rest, the first floor, back hall, or the side hall; the side hall faces Huron street; as the halls run there, you go up in the elevator and you face on Genesee street; then you walk the whole length of the hall down Genesee street until you come to a hall which runs at right angles from Genesee street down towards Huron street, and at the end of that hall I was stationed, facing Huron street; when I was there it was facing the Morgan building right in that hall; my station was on the first floor: I know the woman's name was Mrs. Martin, because she told me so the day she came to attend to Mr. Bell; she said her name was Miss Mary Martin and that she had a note from Mr. Lewis,
Mr. Bell's brother-in-law; she said she had a note to come
39 and see Mr. Bell and stay with him until he got well; she said she always did: he was in his room and I don't know what was the matter with him; the first visit from Mrs. Martin was in the year that I was arrested; I was arrested the 16th or June; this was about the middle of April in 1890, I guess; all these occurrences I testified to were about the middle of April and in May; I know it was the May month when she was there.

Upon redirect examination, witness testified:

I saw drinks going in there quite often during the day, six or eight times, as near as I can remember; when I was arrested I was tried in police court and honorably discharged.

Dr. THOMAS LOTHROP, sworn, testified for the plaintiff:

I am a practicing physician; I know Mr. Bell; I know Mrs. H. A. Wisner; I know Mrs. Martin; they are patients of mine; I remember their living at one time in Irving place; I have seen Mr. Bell at the house; I don't remember how many times I saw him there; I don't keep these things in my mind for four, five or six years after they pass; I can't say whether I saw him there more than once or not; Mrs. Wisner was there and Mrs. Martin, another patient of mine, and a servant; I don't remember the year; a few years ago; I remember their moving away, I should say four or five years ago; I do not know where Mrs. Martin is now; I have forwarded some letters to her, two or three weeks ago, I think, to Philadelphia.

Cross-examination by Mr. SEYMOUR:

I didn't suppose there was any one questioned the high character of Mrs. Wisner; I have known her thirty-five years; she has been a patient of mine thirty-five years and she is from one of the very best families, a woman of exceptionally high character, an exceptionally fine woman from one of our oldest Buffalo families; I never heard the character of Mrs. Martin questioned; I always supposed Mrs. Martin to be a most excellent woman; all that I know of her is good, exceptionally good.

Redirect examination by Mr. WHEELER:

I do not know the fact that the neighbors at Irving place protested against their remaining in the neighborhood on account of their relations to Mr. Bell; I don't know that it was owing to that fact that they had to get out; that is not my business; I don't know anything about it; all I know about these people is good; all I know is, professionally, they were patients of mine; I had not heard it discussed up there among the neighbors.

GEORGE D. BARRETT, sworn for plaintiff, testified:

I am physical director for the Young Men's Christian Association; I was employed as a bell boy at the Genesee hotel under Mr. Rogers as proprietor; I know Mr. Bell; he boarded at the hotel; I left in February or March, 1890; I had occasion to go to Mr. Bell's room to answer bell calls; I remember where it was; I have seen women in his rooms at different times; sometimes in morning, sometimes in the evening; I have seen women there at eight in the morning, and I guess as late as between eight and perhaps ten or twelve; I don't remember definitely, of course; we went to answer bells and answered them in turns, and when it came my turn I went, and at times to Mr. Bell's room, generally in response to calls; I always knocked; Mr. Bell most always opened the door, and when he opened it I could see into the sitting-room; I have seen more than one person in there at different times; I don't think I can describe the personal appearance of them; I remember seeing one there who either had brown or black hair, dark complexion; as near as I can remember she was a medium-sized woman; I remember one time Mr. Bell was sick and there was a woman there for some time; and at other times there were some others there; by sick I mean intoxicated; he had been on a spree for some time; I don't know this woman I saw was doing anything; she was moving around; I could not tell the date; I remember seeing her there a number of times, because I think she was there a week or ten days at one time that I have reference to: I took at the time, to the room, such things as a person would need in the hotel, ice water, perhaps sandwiches, or drinks of some kind; I remember taking drinks there; I have seen a woman there quite late in the evening; as late as eleven; I don't know but twelve; these women were fully dressed with one exception, viz: I remember one occasion when I saw a woman in Mr. Bell's room without a waist on, bare arms and

low neck, corsets; I mean she did not have the waist of her dress on; that was in the morning, if I recollect; she was in the first room you come to when you step in.

EDWARD J. FUTTERER, sworn for the plaintiff, testified:

I live at 149 Elmwood avenue, and am a designer in woodwork, clay modeling, carving; I know Mr. Bell; I was employed at the Genesee in the check-room, and answered the bell, and went up to Mr. Bell's room and rapped at the door, and a lady came to the door, and she told me to get a pitcher of water; I got the water and returned it to her; it was between nine and ten; I don't
42 remember how she was dressed; she was between twenty-two or three, and could have been twenty-nine or thirty; as far as I know she was more light than dark.

Mr. WHEELER: I want to introduce in evidence some records bearing upon the question of alimony. I first offer in evidence the petition and affidavit in the matter of the probate of the will of Alfred Bell, a certified copy of the records from the office of the surrogate of Monroe county. The first is the petition to the surrogate of the county of Monroe, signed and verified by Julie Bell and Frederick A. Bell, and Catherine N. Lewis, also an affidavit by Mr. Bell as to the value of the estate in the State of New York; also the will and certificate of probate. The amount of the estate, according to the affidavit of F. A. Bell, who states in the affidavit he is the executor named in the last will and testament of Alfred Bell, deceased, who died August 24th, 1892, in Rochester, N. Y., and that he died seized of one piece of real estate in the State of New York, being a house and lot number 255 East avenue, in the city of Rochester, and that said real estate is fairly worth the sum of $50,000.00; that deceased died possessed of personal property consisting of furniture, fixtures, horses and carriages, bonds and mortgages, stocks, moneys, etc., situate in the State of New York, of the value of $462,039.61, and then comes the will and the certificate of probate showing how the property was divided; it gave one-third to each.

Mr. SEYMOUR: I object to it upon the ground that it is not conclusive against Mr. Bell as to what the value of the share was that came to him; there may have been an accounting, and he may have owed the estate for advanced money, and may not have
43 received anything under it; on the further ground that it is incompetent and immaterial.

Objection overruled. Defendant excepts. Papers received in evidence and marked Plaintiff's Exhibit "C."

Mr. WHEELER: I also offer in evidence the petition for the probate of the will of Julie Bell, the mother of the defendant, certified in the surrogate's office in the county of Erie, signed and verified by Mr. Bell and his sister, Mrs. Lewis, in which they state that the value of the estate, the real property at $45,000, and the personal property at $62,300.

Defendant's counsel objected to the record in evidence on the grounds last above stated.

Mr. WHEELER: There is fifteen thousand dollars of the property

left to other people, and the balance of the estate is divided among the two children.

The petition for the probate of the will received in evidence, and marked Plaintiff's Exhibit "D," and the will of Julia Bell received in evidence and marked Plaintiff's Exhibit "E."

Exception *to* defendant on the ruling of the referee admitting them in evidence.

Mr. WHEELER: I also offer in evidence certified copy of the decree fixing the value of the property under the will of the defendant's father, subject to the inheritance tax. Mr. Bell, the defendant, was a party to that proceeding. I have here an exemplified copy of the record from the office of the surrogate of Monroe county.

Defendant's counsel objected to the admission of the record in evidence on the grounds above stated. Objection overruled. Defendant excepts.

44 PLAINTIFF'S EXHIBIT "D."

Surrogate's Court, Erie County, New York.

In the Matter of Proving the Last Will and Testament of JULIETT BELL, Deceased.

To the surrogate's court of the said county of Erie:

The petition of Frederick A. Bell and Katharine B. Lewis, residing at the ——, in the said county of Erie, respectfully shows:

Your petitioners allege that Juliett Bell, late of the city of Buffalo, in said county of Erie, died in said city of Buffalo, on or about the 10th day of December, 1893, and that the said decedent was, at the time of her death, a resident of the said county of Erie:

Your petitioners further allege, upon information and belief, that the said decedent died seized of real property valued at $45,000, and possessed of personal property valued at $62,300.

Your petitioners further allege that the said decedent left a last will and testament, bearing date the 10th day of December, 1892, executed as prescribed by the laws of this State, and relating to the real and personal property, and nominating and appointing your petitioners, Frederick A. Bell and Katharine B. Lewis, executors thereof, and that no previous application has been made for the probate of said will.

And your petitioners further allege, upon information and belief, that the only heirs and next of kin of said decedent her surviving, and all the persons in being who would take an interest in any portion of said real and personal property, under the provis-
45 ions of said last will and testament, and the executors and trustees named or described therein, and their respective ages, relationship, places of residence and post-office addresses are as follows:

Name.	Age.	Relationship.	Residence and post-office address.
Frederick A. Bell.....	47	Son	Buffalo, N. Y. } Petitioners.
Katharine B. Lewis ...	45	Daughter ..	Buffalo, N. Y. }
Sarah A. Conniff.....	48	Niece	Jacksonville, Duval county, Florida.
John H. Dibble	34	Nephew ...	Norman, Oklahoma.
Charles H. Dibble.....	36	Nephew ..	Norman, Oklahoma.

And your petitioners further allege, upon information and belief, that all the above-named persons are of sound mind.

Wherefore, your petitioners pray that said last will and testament be admitted to probate, and established as and for the last will and testament of said testatrix, valid to pass real and personal property, that said heirs and next of kin of said decedent her surviving, and all the persons in being who would take an interest in any portion of said real and personal property, under the provisions of said last will and testament, and the executors and trustees named and described therein, be cited to attend the probate thereof; that letters testamentary issue to the executors in said will named, and that all such process and proceedings may be had and taken in this proceeding for that purpose, as the law may require.

Dated this 31st day of January, 1894.

F. A. BELL.
KATHARINE B. LEWIS.

46 STATE OF NEW YORK, } ss.:
Erie County, City of Buffalo, }

Frederick A. Bell and Katharine B. Lewis, being severally duly sworn, say that they have read the foregoing petition by them subscribed, and know the contents thereof, and that the same is true to the knowledge of the deponents, except as to matters therein stated to be alleged on information and belief, and that as to those matters they believe it to be true.

F. A. BELL.
KATHARINE B. LEWIS.

Subscribed and sworn to before me, this 31st day of January, 1894.

WALTER P. COOKE.

STATE OF NEW YORK, } ss.:
Erie County, City of Buffalo, }

We, Frederick A. Bell and Katharine B. Lewis, do swear that we are the executors named in the last will and testament of Juliett Bell, late of the city of Buffalo, in said county of Erie, deceased; that we are citizens of the United States, residents of the city of Buffalo, in said county of Erie, upwards of the age of twenty-one years, and that we will well, faithfully and honestly discharge the duties of executors of and under the said last will and testament.

FREDERICK A. BELL.
KATHARINE B. LEWIS.

Subscribed and sworn to before me, this 31st day of January, 1894.

WALTER P. COOKE,
Notary Public.

47 STATE OF NEW YORK, } ss:
County of Erie, Surrogate's Court, }

I, John J. Griffin, clerk of the surrogate's court of the said county of Erie, do hereby certify that I have compared the foregoing and annexed copy of petition, probate of will and oath of executors in the matter of the probate of the will of Juliett Bell, deceased, with the original record thereof now remaining in this office, and have found the same to be a correct transcript therefrom, and of the whole of such original record.

In witness whereof I have hereto set my hand and [SEAL.] affixed the seal of said surrogate's court, at Buffalo, N. Y., this 29th day of March, 1895.

JOHN J. GRIFFIN,
Clerk of Surrogate's Court.

None of said Exhibits "C," "D" and "E," or above decree, fixing the value of the property, were read before or after being offered in evidence, until the summing up by plaintiff's counsel.

EDWARD B. GRIDLEY recalled for plaintiff.

Q. Did your sister have a divorce from her former husband?

Mr. SEYMOUR: I object to that on the ground that the decree is the best evidence.

Mr. WHEELER: I suppose we can get it?

Mr. WHEELER: I desire now to read in evidence the letters. Exhibits "A" and "B."

Mr. SEYMOUR: I have no objection to their being read.

48 Plaintiff's counsel then read Exhibit "A," which is as follows:

BUFFALO, N. Y., *July 17th*, 1893.

MARY: Early in May last I sent Mr. Seymour of this city to see you, to discuss with you the advisability of your taking some steps looking to the termination of the marriage relation existing between us, and also for the purpose of giving you the determination I had arrived at. I have been waiting since our separation, in the hope that you would of your own volition take some measures looking to that end, believing that it would be better for you in all respects to initiate such proceedings rather than force me to do so, as a woman's status is always much better to be a complainant than defendant in such actions, and I had hoped that after reflection you might come to see it as I do. Not hearing from you in any way, I am constrained to write you, giving you my position from my standpoint, in a manly and kindly way, with the full intention to begin an action if you do not. Of course, Mary, by this time any hopes of any reconciliation between us, as far as our being any more to each other than we are at present, must by you have been aban-

doned, and now should come to us our future, and what there may be in life left to us. To sustain the relations that exist any further is doing an injustice to both, and keeping up a pretense of what is not real, only so far as the legal bond is concerned, while for you in your own home, surrounded by your family, friends, and without care, your life is completely free from the almost unendurable conditions that surround mine, and it is this false position which I desire to do away with, and to put myself before the world in such shape that I will not be misconstrued, nor my condition be a matter of further unfavorable comment, and what is true of my condition is largely so of yours. I have
49 given this matter a great deal of careful thought, and it does seem to me that we are doing ourselves great injustice in sustaining the relation now existing, when there is nothing but the law that binds us, and, believe me, it was entirely out of consideration for you, and with the hope that I might be able to make something out of my life also, and with no impertinent curiosity, that I sent Mr. Seymour to you. I am now writing you on the same subject, to express to you my conclusion, and at the same time, if you are so disposed, the opportunity to take the initiative, which, from my standpoint, it is wiser and better for you to do. I am also fully decided that if you do not do so, it only remains for me — take the matter in my own hands. I fully recognize that by law you are my wife, and from this fact is due the consideration I want to extend, with the alternative offered.

Yours truly, F. A. BELL.

Also Exhibit "B," which is as follows:

BUFFALO, N. Y., *July* 5, 1891.

MARY: I have yours of the first inst., and think perhaps, in justice to you, as well as myself, I should reply. I have also received the several letters you have heretofore written me, but have not answered them, because I could see no good that could come to either of us by so doing. With me it only brings up unpleasant memories of the past and associations that I have striven to forget ever existed, and which, Mary, can never be renewed. My love for you is a thing of the past, dead and buried, and can never be revived. My life is in some respects, of course, a complete failure, and yet in others it is a fair success. I have no home and none of those domestic relations the interest in and responsibilities
50 of which go so far to develop a man or a woman, in the fuller sense of manhood and womanhood. My sole interests now seem to center in my parents, Kate and Alfie, and in my business, and in the care and attention I give to them comes the relief from the wasted other side of my life. I cannot say that I am happy, neither am I miserable. I try to philosophize, and in the cares and duties of the present to forget the troubles of the past. I cannot admit either that I am a "total wreck," as some good friend would seem to intimate to you. I am somewhat independent in my thoughts and actions, and do not allow outsiders to dictate what I

shall or shall not do, but hold myself responsible for my own deeds, and think I have some very good friends yet. My feelings toward you are not hard. I have gotten over that. I was at first, but time and absence have seemed to run away with that feeling, and in its place has come one of indifference. I know I loved you when I married you, but have ceased to give you credit for ever having cared much for me, and that policy dictated your marriage rather than love. But be that as it may, it is all over now, and we have only to make the best of what the future may have in store for us. I certainly can only wish your life to be as happy as you can make it, and if the forming of other ties would in any way bring about a better condition of things for you, don't let me for one moment stand in the way. I will not oppose any separation that is not based on dishonorable ground, and in saying this I am not speaking for myself, for another marriage is the very last thing I should ever contemplate. A woman's life is, however, different from a man's. She is much more dependent, and should from any cause your mother be taken away, you to an extent would be quite alone in the world. I am glad to know that she is so well and trust she may be spared
51 to you for many years. I have not written as I have, Mary, with any motive of unkindness or from any wish to save hard feelings. Those feelings are all gone, and I feel in my heart as perfectly free from you as if I had never known you, only realizing that by law we are held together. I think we would both be happier were that bond dissolved, but I shall most certainly leave the matter to do with as you may deem best. Your letter I thought demanded a frank, honest reply from me, and that you were entitled to know my true feelings toward you, and have only thought to be plain and straightforward with you.

FRED.

Mr. WHEELER: I also offer in evidence the following records:

"Frederick A. Bell and Mary G. Bell, his wife, to Alfred Bell, a deed of conveyance of real estate on Delaware avenue, being about 235 feet front by 174 feet deep, dated November 17th, 1883, and recorded in Liber 463 of Deeds, at page 62. Consideration expressed is $47,500.00." This deed recites that both the grantors are residents of Buffalo. I offer this as bearing upon the question of the amount of property, and also the residence of the parties.

It is agreed between counsel that the decree of divorce by the Illinois supreme court, of the plaintiff from her former husband, may be offered in evidence at the close of the defendant's case.

CHARLES CLIFTON, called for plaintiff, testified:

I live in Buffalo and am treasurer of the Bell, Lewis & Yates Coal Mining Company. Their principal office is at Reynoldsville, Pa.; I am stationed in Buffalo; the books are kept here in the general office in Buffalo; I am secretary and treasurer and have been since its organization in June, 1887. The firm of Bell, Lewis &
52 Yates had operated this business and several other branches; the coal mining company succeeded to the coal mining busi-

ness only; that branch of the business was put into a corporation and I am its secretary and treasurer; they own mines, both own and operate mines; they own the three mines at Reynoldsville and two mines at Falls Creek; one is called the Rochester mine; it is at Falls Creek; also the Sandy Lick mine, but I don't think that has been operated much in a year; at Reynoldsville we have the Silver Run, Hamilton and Sprague; the company owns some of the fee of the property back of the Silver Run mines; as a rule we buy the coal rights; we buy the coal in the mine, so much per acre; in other cases we mine on a royalty; what we take out at the Rochester and Sandy Lick mines we operate on a royalty to the owners of the property; we pay royalty to the estate of Alfred Bell; what comes principally out of the Rochester mines we pay by the ton; I might approximate the number of tons we took out; it was about 300,000 tons; the year before it was pretty near 400,000 tons, and the year before we had a falling off; we paid to the Bell estate eight cents a ton; I should say sixty per cent. of the output of the Rochester mine went to the estate of Alfred Bell; there are no other mines where royalty is paid to the Alfred Bell estate; never paid any to Bell personally.

The capital of the mining company is $1,000,000; I have charge of the stock book as secretary; Mr. Bell owns 3,325 shares; that would be $335,000 at par value; I know the firm of Bell & Lewis; it is composed of Mr. Fred Bell and Mr. George H. Lewis; they have various enterprises in common, some of them of an investment character and some a merchandise character; they run some mining stores at the mining properties; they have three stores, one
53 at Reynoldsville, one at Dubois and one at the town of Roth more; they furnish miners' supplies, groceries, a general store; in the neighborhood of 1,600 miners are employed; then they have stock investments and property investments of various sorts; they have an interest in a mine at Falls Creek known as the London mine and a small mine at Reynoldsville known as the Sherwood mine.

The properties owned by Bell & Lewis are on leases to the mining company; the mining company operates them; in a general supervisory sense as far as book-keeping is concerned, I have to do with the offices of Bell & Lewis; there is no capital in a book keeper's sense; the books are not opened in that way; the books were simply a continuance of the old firm of Bell, Lewis & Yates because at the dissolution of that firm, owing to the insolvency of Mr. Yates, they were continued; I have knowledge of the book value of the property; I don't pretend to know the actual value upon the books; the merchandise stock that is carried runs somewhere between $30,000 and $50,000, according to the time of the year; that is entirely irrespective of the mining interests; I know of no other enterprises Mr. Bell is interested in; the mining company issued bonds, the bulk of which is owned by Mr. Lewis.

Cross-examination by Mr. SEYMOUR:

The amount of shares Mr. Bell owns is $3,125, instead of $3,350; the Bell, Lewis & Yates Co. did not declare any dividend last year; none of these companies in which I have described Mr. Bell as being interested declared any dividends last year or the year before; there was a small profit, a relative profit in the general merchandise stores, in the neighborhood of $20,000, on 1894.

54 Redirect examination by Mr. WHEELER:

In the past years it has been larger. I can't tell what it was in 1893; I should think it was $30,000, but not as high as $40,000. The mining company declared no dividend, but they made a profit in their mining operations; they had certain obligations to meet, which they used the profits to liquidate instead of declaring dividends; we had improvements to make and all that sort of thing; I think the profits of the mining business for the last year would warrant the declaration, ordinarily, of 6 per cent. The year before there was a deficit, a heavy deficit that year, owing to bad debts; that was the year 1893; the year before that I can simply swear to the fact that there was a dividend of 6 per cent. in 1892; there was a dividend declared the year before that; the business, as it has run from year to year, has been profitable; the stock is valuable stock; it has a value; I think it is worth par.

Recross-examination by Mr. SEYMOUR:

The deficit in 1893 was in round numbers about fifty thousand dollars; indirectly in a large part this was owing to the financial embarrassment of Mr. Yates. It was a serious year financially, and aside from what we lost indirectly on Mr. Yates we made a good many bad debts; it was a black year; at the time of the failure of Mr. Yates, in March or April, 1893, he was indebted, either directly or by means of guaranteeing certain paper, to the extent of $323,000 to the coal mining company; in consideration of certain property, in which they all had a common interest, viz: namely, the firm of Bell, Lewis & Yates, by taking over Mr. Yates' interest in that firm; Mr. Bell and Mr. Lewis personally guaranteed to the mining company this indebtedness of $323,000, and what they took
55 figured out worth about $105,000 when it was all simmered down, so there was a loss of $220,000, which fell upon Mr. Bell and Mr. Lewis.

It is agreed by counsel that this action was begun by the personal service of the summons and complaint upon the defendant in Buffalo, December 22d, 1894.

The plaintiff here rested with the exception of the production of the certified copy of the decree of divorce between plaintiff and her former husband.

PLAINTIFF'S EXHIBIT F.

UNITED STATES OF AMERICA, } ss:
State of Illinois, Cook County, }

Pleas before the honorable the judges of the circuit court of Cook county, at a term thereof, begun and held at Chicago, in said county and State, on the third Monday (being the sixteenth day) of March, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

Present: Honorable William W. Farwell, chief justice of the circuit court of Cook county, State of Illinois; E. S. Williams, Henry Booth, John G. Rogers, Lambert Tree, judges; Charles H. Reed, State's attorney; Timothy M. Bradley, sheriff.

Attest: JACOB GROSS, *Clerk.*

56 Be it remembered that — the term aforesaid, to wit: on the 25th day of March, A. D. 1874, the following among other proceedings were had and entered of record in said court, to wit:

BENJAMIN BRUCE, JR., *vs.* MARY GRIDLEY BRUCE. } 7916. Bill.

This day came the complainant by A. L. Rockwell, Esq., his solicitor, and the defendant, by Jesse O. Norton, Esq., her solicitor, and thereupon this cause coming on to be heard before the court, Hon. W. W. Farwell, upon the complainant's bill of complaint, taken as confessed by said defendant, and testimony adduced in open court, a certificate of which testimony is this day filed in said cause.

And it appearing to the court from the testimony of the said complainant, that said complainant, Benjamin Bruce, Jr., and said defendant, Mary Gridley Bruce, were married on the 10th day of January, A. D. 1871, at Bloomington, Illinois, and that shortly after said marriage he removed to Chicago, where he, the said complainant, has ever since, and now resides.

And it further appearing to the court that about the 20th day of June, A. D., 1871, the said defendant, without cause or provocation, deserted the said complainant, and from that time henceforth, has continued such desertion, and has refused to return to said complainant, though often requested so to do.

And it further appearing to the court from the testimony of said complainant, that all the material allegations in the complainant's bill of complaint have been substantially proven, and that the complainant is a resident of the State of Illinois, and that de-

57 fendant has been guilty of desertion without any reasonable cause, for the space of two years prior to the filing of the bill of complaint in said cause.

It is therefore ordered, adjudged and decreed, and the court, by virtue of the power and authority therein vested, doth order, adjudge and decree, that the bonds of matrimony heretofore existing between the complainant and defendant be, and the same are hereby dissolved, and the same are hereby dissolved accordingly.

UNITED STATES OF AMERICA, } ss:
State of Illinois, Cook County, }

I, Frank J. Gaulter, clerk of the circuit court of Cook county, in the State aforesaid, do hereby certify, that I am the keeper of the records and files of said court, and that the above and foregoing is a true, perfect and complete copy of a certain decree made and entered of record in said court on the 25th day of March, A. D., 1874, in a certain cause lately pending in said court, on the chancery side thereof, between Benjamin Bruce, Jr., complainant, and Mary Gridley Bruce, defendant.

In witness whereof, I have hereunto set my hand and
[SEAL.] affixed the seal of said court at Chicago, in said county, this 24th day of May, A. D. 1895.

FRANK J. GAULTER, *Clerk.*

58 STATE OF ILLINOIS, } ss:
County of Cook, }

I, M. F. Tully, chief justice of the circuit court of Cook county, in the State of Illinois, hereby certify that Frank J. Gaulter, who signed the above certificate, was at the time of signing the same, and is now, clerk of the said circuit court of Cook county, duly commissioned and qualified; that said court is a court of record, having a clerk and seal; that said attestation is in due form and by the proper officer, according to the laws of the State of Illinois, and that the above signature of said clerk is genuine.

Witness my hand and seal at Chicago, in said county of Cook, this 24th day of May, A. D., 1895.

M. F. TULLY, [SEAL.]
Chief Justice of the Circuit Court of Cook County.

UNITED STATES OF AMERICA, } ss:
State of Illinois, County of Cook, }

I, Frank J. Gaulter, clerk of the circuit court of Cook county, in the State of Illinois (said court being a court of record), do hereby certify that the Honorable M. F. Tully, whose name is subscribed to the annexed and foregoing certificate, was, at the time of the signing thereof, and now is, chief justice of said circuit court, duly elected, commissioned and qualified, and that his said signature is genuine.

In witness whereof, I have signed my name and affixed
[SEAL.] the seal of said circuit court, at my office, in the city of Chicago, in said Cook county, this 24th day of May, 1895.

FRANK J. GAULTER, *Clerk.*

59 Mr. SEYMOUR: I will open this case by introducing the decree of the Pennsylvania court. The process was served under a process in the State of Pennsylvania which they serve upon a non-resident, a *pluries subpœna*. It was not served personally upon Mrs. Bell, but by publication, and a copy of it followed by the notice of hearing was sent to her.

By the REFEREE: Was she then in the State of Illinois?

Mr. WHEELER: She was not.

Mr. SEYMOUR: I produce the envelope which contained the *pluries subpœna*, which is postmarked Reynoldsville, Pa., December 1st, 8 a. m., 1894, and it is directed to Mrs. Mary G. Bell, Bloomington, Ills. The words "Bloomington, Ills." are erased, and the words "101 Hancock street, care N. Barney, Brooklyn, N. Y.," are written in a blue pencil. Do you admit, Mr. Wheeler, she received that notice?

Mr. WHEELER: That printed matter was contained in that envelope.

Mr. SEYMOUR: And that printed matter is the *pluries subpœna*

Mr. WHEELER: Whatever it is I presume it is. I don't want to make any concessions. I simply concede that that envelope was forwarded to Mrs. Bell at Brooklyn, and that she received it there. In making this concession, I am simply willing to dispense with the proof of that fact. So far as the legal effect of this decree is concerned, it would have no effect upon this case, I claim.

Mr. SEYMOUR: I only wish to get upon the record the fact that Mrs. Bell received notice outside the State of Pennsylvania of the pendency of this action.

60 Mr. WHEELER: I told Mr. Seymour I would dispense with his calling any one from Pennsylvania to show that fact.

Mr. SEYMOUR: This envelope is postmarked upon its back, "Brooklyn, N. Y., December 4th, 10 a. m., 1894, station B," and your admission is that that envelope contained that matter.

Mr. WHEELER: That envelope contained that printed slip.

Mr. SEYMOUR: I will read it.

Objected to by plaintiff as incompetent, immaterial, and irrelevant, and constitutes no defense in this action. Objection overruled. Exception by plaintiff.

Mr. SEYMOUR: It is as follows:

"Libel in divorce. Frederick A. Bell *vs.* Mary G. Bell. May term, 1893, *pluries subpœna* in divorce, Jefferson county, *ss*: The Commonwealth of Pennsylvania to Mary G. Bell, greeting: We command you that all manner of business and excuses being set aside, you be and appear in your proper person before our judges at Brookville, at our court of common pleas, there to be held on the second Monday of December next, to show cause, if any you have, why your husband, Frederick A. Bell, should not be divorced from the bonds of matrimony which he hath contracted with you, the said Mary G. Bell, agreeable to the petition and libel exhibited against you before our said court, and this you shall in no case omit at your peril. Witness the Hon. E. Heath Clarke, president of our said court, at Brookville, the 26th day of February, A. D., 1894. Allowed by the court. Attest, W. D. Clarke, prothonotary, to Mary G. Bell,

greeting: You are hereby notified to appear before the honorable judges of the court of common pleas at Brookville, Pa., on
61 the 2d Monday of December next, to answer as set forth in the above subpœna. G. D. Gourley, sheriff. October 17th, 1894."

The notice as above read, and envelope as above noted, marked Defendant's Exhibit No. 1.

Mr. SEYMOUR: I offer in evidence another envelope, postmarked Reynoldsville, December 1st, 1 p. m., 1894, directed to Mary G. Bell, of Bloomington, Ills., and the words, "Bloomington, Ills.," erased, and the words, "101 Hancock street, care N. Barney, Brooklyn, N. Y.," written upon the face of the envelope. The envelope is postmarked upon its back, "Brooklyn, N. Y., December 4th, 10 a. m., 1894, rec'd." The envelope contains the following notice: "Examiner's notice. Frederick A. Bell *vs.* Mary G. Bell, in the court of common pleas of Jefferson county, No. 225, May term, 1894. Libel in divorce. And now, September 13th, A. D. 1894, on motion presented in open court by George A. Jenks and Gordon & Reed, attorneys for libellant, John Conrad, Esq., appointed examiner in the above case, to proceed therein as directed by law. By the court. Attest, W. D. Clarke, prothonotary, to Mary G. Bell: You are hereby notified that I will attend to the duties of my appointment in the above-stated case, at my office, on Main street, in the borough of Brookville, in the county of Jefferson, and State of Pennsylvania, on the 4th day of December, 1894, at 9 o'clock a. m., at which time and place you may attend, if you see proper, and wish to do so. John Conrad, examiner. November 3d, 1894." The notice and envelope above, marked Defendant's Exhibit No. 2.

Mr. WHEELER: I desire to raise the same objection to the last paper as I did to the first.

Same ruling as before. Plaintiff excepts.

62 Mr. SEYMOUR: I offer in evidence an exemplified copy of the judgment of divorce of the court of common pleas of the county of Jefferson, State of Pennsylvania, dissolving the marriage between Frederick A. Bell, libellant, and Mary G. Bell, respondent.

Mr. WHEELER: I object to that as incompetent, immaterial and irrelevant, and on the further ground that it appears on the face of the proceeding that there never was any personal service of any process upon the defendant in the State of Pennsylvania. It appears by the face of the paper that she was not a resident of the State of Pennsylvania, and also on the ground that the exemplification is not a proper one.

Mr. SEYMOUR: You admit that the parties mentioned in this decree I offer in evidence, are the same parties now before this court?

Mr. WHEELER: Yes.

Objection overruled. Plaintiff excepts. Judgment marked Defendant's Exhibit No. 3.

Defendant's Exhibit No. 3.

Among the records and proceedings enrolled in the court of common pleas in and for the county of Jefferson, in the Commonwealth of Pennsylvania, to No. 225, May term, 1894, is contained the following:

Copy of Continuance, Docket Entry.

Frederic A. Bell
versus
Mary G. Bell.

Jenks, G. & R.

T. & W.	$2.00
Sh'ff, Gourley	1.00
Do. do.	1.00
Do. do.	1.00
Do. do.	1.50
Printer's bill	6.00
Examiner	56.00
Pro. Clarke	7.50

63 *Libel in Divorce.*

And now, April 9, 1894, the within petition presented before me in vacation and upon due consideration of the facts therein set forth a subpœna is awarded, returnable to next May term, E. Heath Clark, pres. judge. April 10, 1894, subpœna issued returnable to next term, May 14, 1894. After making due and diligent search for the within-named Mary G. Bell, I am unable to find her in my bailiwick. May 17, 1894, on motion presented in open court, alias subpœna awarded, returnable at next term, by the court; same day alias subpœna issued, September 10, 1894. After giving due and diligent search I am unable to find the within-named Mary G. Bell in my bailiwick. September 14, 1894, motion for order of publication and pluries subpœna presented in open court and motion granted by the court; same day pluries subpœna issued to be served by publication; same day on motion presented in open court, John Conrad, Esq., appointed examiner, by the court; same day commission issued. By virtue of the act of assembly in such cases made, and of the order of the court, I have caused notice to Mary G. Bell, the within-named respondent, to appear on the first day of the December term, 1894, of the court of common pleas of Jefferson county, Pa., and answer said complaint, to be published in the Brookville *Republican*, a weekly newspaper published in Brookville, Jefferson county, Pa., for four successive weeks to wit:—In the issues of the said paper of October 17, 1894, October 24, 1894, October 31, 1894, and November 7, 1894, December 24, 1894. Report of examiner filed, January 8th, 1895. Decree signed.

By the COURT.

64 In the Court of Common Pleas of Jefferson County, No. — of May Term, 1894.

FREDERIC A. BELL
versus
MARY G. BELL. } Petition for Divorce.

To the honorable the judges of the court of common pleas of Jefferson county, Pa.

The petition or libel of Frederic A. Bell, of the borough of Reynoldsville, in the county aforesaid, respectfully showeth:

That your petitioner was, on the 24th day of January, A. D. 1878, at Bloomington, in the State of Illinois. lawfully joined in marriage with Mary Gridley, his present wife, and from that time until the first day of September, A. D. 1882, lived and cohabited with her and hath, in all respect, demeaned himself as a kind and affectionate husband, and although by the laws of God, as well as by the mutual vows plighted each to the other, they were bound to that uniform constancy and regard which ought to be inseparable from the marriage state, yet, so it is, that the said Mary, in violation of her marriage vow, from the 1st day of September, A. D., 1882, hath willfully and maliciously deserted and absented herself from the habitation of your petitioner, without any just or reasonable cause, and hath persisted in and continued such desertion for the term of eleven years and upwards, and still doth persist in and continue, willfully and maliciously, to absent herself from and desert your petitioner and his habitation. And your petitioner further showeth:—That the said Mary G. Bell did, by cruel and barbarous treatment, render the condition of your petitioner intolerable and his life burdensome, for more than two years prior to the said willful and malicious desertion, and this without any just cause or provocation by him to her offered; that the said Mary did, at divers times, without just
65 cause, become violently angry towards your petitioner; that she frequently relapsed into sullen moods, continuing for days, during which times she failed and refused to treat your petitioner with even so much as ordinary civility; that she treated such friends as he chanced to invite to his home uncivilly and inhospitably to such an extent that he was compelled to desist inviting or bringing them to his said home; that she so treated your petitioner's father and mother that they refused to visit him in his home, that she repeatedly and without cause or justification charged your petitioner with infidelity to his marriage vows, and caused him to be watched by detectives and other spies; that she threatened to commit suicide, and, on three occasions, pretended to attempt to carry such threats into execution by inhaling chloroform; and that she did in these and other ways insult, humiliate, terrify and annoy your petitioner to such an extent that all harmony and happiness which he, of right, expected from the marriage state, was destroyed and made impossible, and his life was thereby rendered burdensome and his condition intolerable. Wherefore your petitioner or libellant, further showing that he is a citizen of the Commonwealth of

Pennsylvania, and hath resided therein and within the county of Jefferson for one whole year previously to filing this, his petition of libel, prays that a subpœna may issue from the said court to the said Mary G. Bell, commanding her to appear at the next court of common pleas of said county, to answer said complaint, and show cause, if any she can, why the libellant should not be divorced and separated from the bonds of matrimony as aforesaid as if the same had never been contracted. And he will ever pray, &c.

FREDERIC A. BELL.

66 STATE OF PENNSYLVANIA, } ss:
County of Jefferson, }

Before me, a justice of the peace in and for the said county of Jefferson, personally came Frederic A. Bell, the petitioner or libellant above named, who being duly sworn according to law, doth depose and say:

That the allegations contained in his foregoing petition of libel are true, to the best of his knowledge and belief; that the said complaint is not made out of levity or collusion between him and the said Mary G. Bell, his wife, and for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in said petition or libel.

FREDERIC A. BELL.

Sworn to and subscribed before me, this 5th day of April, A. D. 1894.

[SEAL.] E. NEFF,
Justice of the Peace.

FREDERIC A. BELL } No. 225 of May Term, 1894.
v.
MARY G. BELL }

Libel in Divorce.

And now, April 9th, 1894, the within petition presented before me in vacation, and, upon due consideration of the facts therein set forth a subpœna is awarded, returnable to next May term.

E. HEATH CLARK,
Pres. Judge.

Filed April 10, 1894.
W. D. CLARKE, *Pro.*

G. A. JENKS,
GORDON AND REED,
Att'ys for Libellant.

67 *Libel in Divorce.*

JEFFERSON COUNTY, ss:

The Commonwealth of Pennsylvania to Mary G. Bell, Greeting:

[SEAL.] We command you that all matter of business and excuses being set aside, you be and appear in your proper person before our judges at Brookville, at our court of

common pleas, there to be held on the second Monday of May next, to show cause, if any you have, why your husband, Frederick A. Bell, should not be divorced from the bonds of matrimony which he hath contracted with you, the said Mary G. Bell, agreeable to the petition and libel exhibited against you before our said court, and this you shall in no case omit at your peril.

Witness the Hon. E. Heath Clark, president of our said court at Brookville, the 10th day of April, A. D. 1894.

Allowed by Hon. E. Heath Clark, pres. judge.

W. D. CLARKE,
Prothonotary.

(Endorsed.)

No. 225, May Term, 1894.

FREDERICK A. BELL
versus
MARY G. BELL. } Subpœna in Divorce.

Jenks, Gordon & Reed:

68 May 14, 1894, after making due and diligent search for the within-named Mary G. Bell, I am unable to find her in my bailiwick. So answers—

D. G. GOURLEY, *Sheriff.*

Costs, $1.00.

Sworn to and subscribed before me this 14th day of May, 1894.

W. D. CLARKE, *Pro.*

Same day sworn to in open court.

W. D. CLARKE, *Pro.*

In the Court of Common Pleas of Jefferson County, May Term, 1894.

FREDERIC A. BELL, Libellant,
vs.
MARY G. BELL, Respondent. } No. —. Libel in Divorce.

In open court, May 17th, 1894, the libellant, by his attorneys, moves the court to award an alias subpœna, the high sheriff of Jefferson county having made return and proof on May 17th, 1894, to the original subpœna, that after due and diligent search, he was unable to find the respondent in his bailiwick, etc.

G. A. JENKS,
GORDON & REED,
Attorneys for Libellant.

69 FREDERIC A. BELL, Libellant, *vs.* MARY G. BELL, Respondent. } No. 225 of May Term, 1894.

Motion for Alias Subpœna.

May 17th, 1894, the within motion presented in open court, and proof having been made to the original subpœna, that after due and diligent search, the sheriff was unable to find respondent in his bailiwick, an alias subpœna is hereby awarded, returnable at next term.

By the court:

E. HEATH CLARK, *Pres. Judge.*

G. A. JENKS,
GORDON & REED,
Att'ys for Libellant.

Libel in Divorce.

JEFFERSON COUNTY, *ss:*

The Commonwealth of Pennsylvania to Mary G. Bell, Greeting:

We command you that all matter of business and excuses being set aside, you be and appear in your proper person before [SEAL.] our judges at Brookville, at our court of common pleas, there to be held on the second Monday of September next, to show cause, if any you have, why your husband, Frederick A. Bell, should not be divorced from the bonds of matrimony which he hath contracted with you, the said Mary G. Bell, agree-
70 able to the petition and libel exhibited against you before our said court, and this you shall in no case omit at your peril.

Witness the Hon. E. Heath Clark, president of our said court at Brookville, the 17th day of May, A. D. 1894.

Allowed by the court:

W. D. CLARKE,
Prothonotary.

(Endorsed.)

FREDERICK A. BELL *versus* MARY G. BELL. } No. 225, May Term, 1894.

Alias Subpœna in Divorce.

Sept. 10th, 1894.—After giving due diligent search, I am unable to find the within-named Mary G. Bell in my bailiwick. So answers—

D. G. GOURLEY, *Sh'ff.*

Sheriff's costs, $1.00.

Sworn to and subscribed before me, this 10th day of September, 1894.

W. D. CLARKE, *Pro.*
JENKS, GORDON & REED.

71 In the Court of Common Pleas of Jefferson County.

FREDERIC A. BELL
versus
MARY G. BELL. } No. — of May Term, 1894. In Divorce.

And now, September 13, 1894, the petitioner or libellant, Frederic A. Bell, by his attorney-, George A. Jenks and Gordon and Reed, showing by the record that the sheriff of Jefferson county hath made return to the original subpœna awarded in said case, "that after due and diligent search he is unable to find the respondent, Mary G. Bell, within his bailiwick," and that said sheriff hath made the same return to the alias subpœna awarded in said case, respectfully moves the court to award a pluries subpœna or order for publication, to be served on said Mary G. Bell, by publication, as required by law and the rules of this court.

G. A. JENKS,
GORDON & REED,
Attorneys for the Libellant.

September 13, 1894.—The above motion being presented in open court and it appearing that the sheriff of Jefferson county was unable to find the respondent, Mary G. Bell, in his bailiwick, and that he hath made such return to the original subpœna and to the alias subpœna, it is now ordered and decreed that a notice in form of a pluries subpœna be issued to the said Mary G. Bell, to be published as required by law and the rules of this court.

By the court:

E. HEATH CLARK,
President Judge.

72 (Endorsed.)

FREDERIC A. BELL
vs.
MARY G. BELL. } No. 225, May Term, 1894.

Motion for Order of Publication and Order of Court Thereon.

September 13, 1894.—The within motion presented and filed in open court and motion granted. See order herewith.

By the court:

E. HEATH CLARK, *Pres. Judge.*
JENKS, G. & R., *For Libellant.*

Libel in Divorce.

JEFFERSON COUNTY, *ss:*

The Commonwealth of Pennsylvania to Mary G. Bell, Greeting:

We command you that all matter of business and excuses being set aside, you be and appear in your proper person before our judges, at Brookville, at our court of common pleas, there to be held on the 2d Monday of December next, to show cause, if any you

have, why your husband, Frederick A. Bell, should not be divorced from the bonds of matrimony which he hath contracted with you, the said Mary G. Bell, agreeable to the petition and libel exhibited against you before our said court, and this you shall in no case omit at your peril.

73 Witness, the Hon. E. Heath Clark, president of our said court, at Brookville, the 14th day of September, A. D. 1894.

Allowed by the court.

W. D. CLARK,
Prothonotary.

(Endorsed.)

FREDERICK A. BELL
versus
MARY G. BELL. } No. 225, May Term, 1894.

Pluries subpœna in divorce, to be served by publication.
Sheriff's costs, $2.50; printer's bill, $6.00.

JENKS, GORDON & REED.

JEFFERSON COUNTY, *ss:*

By virtue of the act of assembly in such case made and of the order of court, I have caused notice to Mary G. Bell, the within-named respondent, to appear on the first day of the December term, 1894, of the court of common pleas of Jefferson county, Pa., and answer said complaint, to be published in the Brookville *Republican*, a weekly newspaper, published in Brookville, Jefferson county, Pa., for four successive weeks, to wit, in the issues of said paper of October 17, 1894; October 24, 1894; October 31, 1894, and November 7, 1894. So answers—

D. G. GOURLEY,
High Sheriff of Jefferson County, Pa.

Sworn to and subscribed before me December 10, 1894.

W. D. CLARKE,
Prothonotary.

74 JEFFERSON COUNTY,
The Commonwealth of Pennsylvania, } *ss:*

In the Court of Common Pleas of Jefferson County, No. 225 of May Term, 1894.

Personally appeared before the undersigned, prothonotary, etc., within and for said county and State, H. J. Weaver, one of the publishers of the *Republican*, a weekly newspaper published at Brookville, county of Jefferson, State of Pennsylvania, who, being duly sworn, states on oath that the notice, of which the annexed is a copy, was published in said newspaper for four consecutive weeks, in the issues bearing date of October 17th, October 24th, October 31st, November 7, 1894.

H. J. WEAVER.

Sworn to and subscribed before me this fifteenth day of November, 1894.

W. D. CLARKE,
Prothonotary.

Libel in Divorce.

FREDERICK A. BELL
vs.
MARY G. BELL. } No. 225, May Term, 1893. Pluries Subpœna in Divorce.

JEFFERSON COUNTY,
The Commonwealth of Pennsylvania, } *ss:*

To Mary G. Bell, Greeting:

We command you, that all matter of business and excuses being set aside, you be and appear in your proper person before our judges at Brookville, at our court of common pleas, there to
75 be held on the second Monday of December next, to show cause, if any you have, why your husband, Frederick A. Bell, should not be divorced from the bonds of matrimony which he hath contracted with you, the said Mary G. Bell, agreeable to the petition and libel exhibited against you before our said court, and this you shall in no case omit at your peril.

Witness, the Hon. E. Heath Clark, president of our said court, at Brookville, the 26th day of February, A. D. 1894.

Allowed by the court.
Attest:

W. D. CLARKE,
Prothonotary.

To Mary G. Bell, Greeting:

You are hereby notified to appear before the honorable judges of the court of common pleas, at Brookville, Pa., on the second Monday of December next, to answer as set forth in the above subpœna.

D. G. GOURLEY, *Sheriff.*

October 17, 1894.

In the Court of Common Pleas of Jefferson County, Pa.

FREDERIC A. BELL
vs.
MARY G. BELL. } No. — of May Term, 1894. In Divorce.

Now, September 13th, 1894, the libellant, Frederic A. Bell, by his attorneys, George A. Jenks and Gordon and Reed, moves the court to appoint an examiner in the above case, to proceed therein as directed by law.

G. A. JENKS,
GORDON AND REED,
Attorneys for the Libellant.

76 FREDERIC A. BELL
vs.
MARY G. BELL. } No. 225 of May Term, 1894.

Motion for the Appointment of an Examiner in Divorce.

Now, September 13th, 1894, the within motion presented in ope court, and John Conrad, Esq., is hereby appointed examiner, to pr ceed in said case as required by law.

By the court:

E. HEATH CLARK,
President Judge.

JENKS, GORDON AND REED,
Attorneys for the Libellant.

JEFFERSON COUNTY, *ss:*

In the Court of Common Pleas of said County.

[SEAL.]

FREDERIC A. BELL
vs.
MARY G. BELL. } No. 225, May Term, 1894. Libel in Divor

And now, September 13th, 1894, on motion presented in open co by Geo. A. Jenks, and Gordon and Reed, Esqrs., attorneys for t libellant, John Conrad, Esq., — appointed examiner in the abo case, to proceed therein as directed by law.

BY THE COURT.

Attest: W. D. CLARKE,
Prothonotary.

77 FREDERIC A. BELL
vs.
MARY G. BELL. } No. 225, May Term, 1894.

Report of Examiner.

John Conrad, examiner	$50.0
" " " paid for notice in 2 papers, at $3.00 each	6.0

Commission to John Conrad, Esq., examiner.

December 24th, 1894.—Presented and filed in open court, a ordered on current argument list.

BY THE COURT.
JENKS, GORDON AND REED.

In the Court of Common Pleas of Jefferson County, May Term, 1894.

FREDERIC A. BELL
vs.
MARY G. BELL. } No. 225. Libel in Divorce.

And now, September 13th, 1894, on motion presented in open court by George A. Jenks and Gordon and Reed, Esqrs., attorneys for the libellant, John Conrad, Esq., appointed examiner in the above-stated case, to proceed therein as directed by law.

BY THE COURT.

Attest: W. D. CLARKE,
Prothonotary.

78 To Mary G. Bell:

You are hereby notified that I will attend to the duties of my appointment in the above-stated case, at my office, on Main street, in the borough of Brookville, in the county of Jefferson and State of Pennsylvania, on the fourth day of December, A. D. 1894, at 9.00 o'clock a. m., at which time and place you may attend if you see proper and wish to do so.

JOHN CONRAD, *Examiner.*

November 3d, 1894.

To the honorable the judges of the court of common pleas of Jefferson county:

The undersigned examiner, appointed by the court, as per commission hereto attached, respectfully reports: That he was affirmed according to law; that he published due notice of the time and place of the hearing in this case, in the Jefferson *Democrat* and the Brookville *Republican*, published in Brookville, Jefferson county, in the State of Pennsylvania, and also posted a copy of said notice in a conspicuous place in the prothonotary's office for more than twenty days, also mailed a copy of said notice more than twenty days before the hearing to Mary G. Bell, at Bloomington, McLean county, Illinois; a copy of said notice is hereto attached. In pursuance of said notice, the examiner attended at his office, in the borough of Brookville, in the county aforesaid, on the 4th day of December, A. D. 1894, at 9.00 o'clock a. m., the time and place fixed for the hearing. C. Z. Gordon, Esq., appeared for the libellant, and on his application, on the ground of sickness of the libellant, the case was continued December 13, 1894, at 9.00 o'clock a. m. At which time

C. Z. Gordon, Esq., appeared for the libellant, and on account
79 of the continued sickness of the libellant, the hearing was adjourned to December 19, 1894, at 9.00 a. m. At which time the libellant appeared with his attorneys, C. Z. Gordon, Esq., and Hon. George A. Jenks. The respondent did not appear; the testimony offered on the part of the libellant and taken by the examiner at said hearing is hereto attached. From the testimony the examiner finds the following facts:

Frederic A. Bell, the libellant, and Mary Gridley, now Mary G.

Bell, the respondent or defendant, were, on the 24th day of January, A. D. 1878, at Bloomington, in the State of Illinois, married. Immediately after their marriage they lived together as husband and wife, in Rochester, New York. Subsequently they lived in a fine residence on Delaware avenue, in Buffalo, New York. She was of an erratic, morose and jealous disposition. They have had no children. Her moods led to troubles in the family, induced by herself. The libellant was of an even, kind and considerate disposition; she made home unpleasant, made it embarrassing to strangers visiting, and very embarrassing and unpleasant to the parents of the libellant to visit at their home. The libellant endeavored to make home happy and comfortable for her; he had a coachman hired to take her out driving from four to six times a week, but she would take sullen moods, when she would not speak to him, and she acted very ugly and cruelly to him sometimes. The respondent, Mary G. Bell, left her husband's home in Buffalo the first or second week in August, 1882, and went to Bloomington, Illinois, and she returned about the first of September, 1882, accompanied by her mother, Mrs. Gridley. She stayed about a week, and she then left home, the house and habitation of her husband, accompanied by her mother, and told Mrs. Maggie Cashian, an
80 employé in the house, that she was going away from there for good, and wanted Mrs. Maggie Cashian to leave at the same time, giving as the reason that it would look better if they both left at the same time. She said she was going to stay with her mother, in Bloomington, Illinois, and she was very much excited. Frederic A. Bell, the libellant, was away on business when she left. She never returned to Frederic A. Bell's society or home after she left at that time; she lived in Bloomington, Illinois, since she deserted the libellant: she left him and willfully and maliciously deserted him without reasonable cause. Frederic A. Bell left Buffalo, New York, in March, 1893, and in March, 1893, he became resident of the borough of Reynoldsville, in the county of Jefferson and State of Pennsylvania, and has been a resident there since, and also has since that time been a citizen of the State of Pennsylvania.

Legal Conclusion.

The examiner's opinion — that the desertion of Mary G. Bell, the respondent, from Frederic A. Bell, the libellant, is, and has been of such a nature and character as to entitle the libellant to be divorced and forever separated from the nuptial ties or bonds of matrimony with Mary G. Bell, the respondent. The desertion having been without just cause and continued for over twelve years, there appears no good reason why a divorce should not be decreed. The examiner, therefore, respectfully recommends the decree of divorce hereto attached, and he hereby certifies that he is not concerned as counsel for, nor related to, either of the parties in this proceedings, nor interested in the event thereof. All of which is respectfully submitted.

December 24, A. D. 1894.

JOHN CONRAD, *Examiner.*

81 In the Court of Common Pleas of Jefferson County.

FREDERIC A. BELL
versus
MARY G. BELL. } Of May Term, 18—. No. 225. Divorce.

And now, January 8, 1895, the court having heard this case, and having fully considered and proceeded to determine the same as to law and justice appertain,

Do sentence and decree, that the said Frederic A. Bell be divorced and separated from the nuptial ties and bonds of matrimony heretofore contracted between him, the said Frederic A. Bell, the libellant, and the said Mary G. Bell, respondent, and that thereupon all and every the duties, rights and claims accruing to either the said Frederic A. Bell, or the said Mary G. Bell, at any time heretofore in pursuance of said marriage, shall cease and determine.

And further, the court do award to the said Frederic A. Bell, against the said Mary G. Bell, his costs in this behalf expended.

By the court:

E. HEATH CLARK,
President Judge.

[L. S.]

Attest: W. D. CLARKE,
Prothonotary.

82 COMMONWEALTH OF PENNSYLVANIA, } *ss:*
County of Jefferson,

I, W. D. Clarke, prothonotary of the court of common pleas in and for said county, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case herein [L. S.] stated, wherein Frederic A. Bell is libellant, and Mary G. Bell, respondent, as the same remains of record before the said court at No. 225 of May term, A. D. 1894, except testimony before examiner.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this eighth day of January, A. D. 1895.

W. D. CLARKE,
Prothonotary.

I, E. Heath Clark, president judge of the eighteenth judicial district, composed of the counties of Clarion and Jefferson, do certify that W. D. Clarke, by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the court of common pleas of said county, was at the time of so doing, and now is, prothonotary in and for said county of Jefferson, in the Commonwealth of Pennsylvania, duly commissioned and qualified, to all of whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere, and that the said record, certificate and attestation are in due form of law, and made by the proper officer.

E. HEATH CLARK,
President Judge.

83 COMMONWEALTH OF PENNSYLVANIA, } ss:
County of Jefferson, }

I, W. D. Clarke, prothonotary of the court of common pleas and for the said county, do certify that the Honorable E. Hea Clark, by whom the foregoing attestation was made, and who h thereunto subscribed his name was, at the time of making there and still is, president judge of the court of common pleas, orphan court and court of quarter sessions of the peace, in and for sa county, duly commissioned and qualified, to all whose acts as suc full faith and credit are and ought to be given, as well in courts judicature *or* elsewhere.

In testimony whereof, I have hereunto set my hand and affixe the seal of said court, this eighth day of January, A. [L. S.] 1895.

W. D. CLARKE,
Prothonotary.

Mr. SEYMOUR: I offer to introduce section 438, article 2d, of th Code of Civil Procedure of the State of New York, with special re erence to paragraphs 1 and 4 of said section.

Mr. WHEELER: I think it is incompetent. The court will tak judicial notice of it.

By the REFEREE: I sustain the objection on the ground that th court is bound to take official notice of it; this court, or any othe court you may go before.

Exception by defendant.

Mr. SEYMOUR: I offer in evidence section 1, chapter 40, of th Revised Statutes of the State of Illinois.

By the REFEREE: That purports to be published by authority

Mr. SEYMOUR: Yes, it is published by authority.

84 Plaintiff objects to it as incompetent, irrelevant and im material. Admitted by the court, and exception by th plaintiff.

Mr. SEYMOUR: I will read the section: "Chapter 40, section 1— Causes. Be it enacted by the people of the State of Illinois, repre sented in General Assembly, That in every case in which a marriag has been or hereafter may be contracted and solemnized betwee any two persons, and it shall be adjudged in the manner herein after provided, that either party at the time of such marriage wa and continues to be naturally impotent; or that he or she had a wife or husband living at the time of such marriage; or that eithe party had committed adultery subsequent to the marriage, or ha willfully deserted or absented himself or herself from the husband or wife without any reasonable cause, for the space of two years, o has been guilty of habitual drunkenness for the space of two years or has attempted the life of the other by poisoning or other means showing malice; or has been guilty of extreme and repeated cruelty; or has been convicted of felony, or other infamous crime, it shall be lawful for the injured party to obtain a divorce and dis solution of such marriage contract."

EDWARD M. BELL, sworn, testified for defendant:

I am thirty-five years old; I am defendant's second cousin: in 1882 I lived in Buffalo, and had since June, 1877. I was admitted to the bar in 1881. I practiced law in Buffalo until July, 1886, in partnership with Ernest K. Weaver, and afterwards with Judge Brundage and Mr. Weaver. Mr. Weaver and I were together for about two years, and were afterwards joined by Judge Brundage for a little more than two years, when I severed my connection
85 with the firm, in July, 1886, I think. During the years 1881 and '82 I have frequently visited the parties to this action at their home on Delaware avenue, Buffalo. I used to go there quite frequently; in the habit of dropping in there if I were uptown. I was there quite often in the winter of 1881 and 1882. Mr. Bell would not always be at home when I called. I cannot remember exactly how many times I had been calling there in the spring or early summer of 1882; I suppose I was there at least once a week. I knew Mrs. Bell very well at that time. The only thing I can say is I knew her very well. I remember the night in question when I spent an evening there. I cannot state what time it was, in the spring or summer. I cannot state definitely the date. It was three or four months before Mrs. Bell went away from Buffalo. I should think the latter part of May or the first part of June. I could not exactly say what time I went to the house that evening. It was the fore part of the evening. Mr. Bell was not there. He was out of the city, I believe. Mrs. Bell and I spent the greater part of the evening on the veranda. It was in the spring; it was warm enough to sit there. It began to rain along about the latter part of the evening as I was about to go to get ready to go down street to my rooms. Mrs. Bell asked me if I would not stay there during the night, and after breakfast go down in the morning, and thus avoid getting wet. I said I should be very glad to do that. Before that Mrs. Bell had been talking to me about her life with defendant. She appeared to be very unhappy, almost hysterical. She said that she thought Mr. Bell did not love her, and she seemed to be quite unhappy about it. She shed tears. The chief subject of her conversation throughout the entire evening was about Mr. Bell and her unhappiness. Before this time I had been there when
86 Mr. Bell was away, passing the evening with her a number of times. I could not say whether once a week or once in two weeks, but I used to go there quite frequently. I used to feel that I could run in there at any time. Usually every time I called there when Mr. Bell was not there, she made a confidant of me in relation to her life with Mr. Bell. Her manner upon those occasions was always that of a lady, but she was always speaking of Mr. Bell, of his being absent from the house so much, and inclined to touch upon the subject of whether he loved her or not. She was afraid that he did not, and she was very unhappy in consequence of it; that was the general tenor of her remarks.

Q. Coming to the point, then, about what time was it when she asked you to stay all night?

A. It was the latter part of the evening, when it began to rain;

I should say possibly about nine o'clock or a little after. I think we stayed downstairs about half an hour after that. I heard her say that she would speak to one of the servants and have a room fixed for me. Then she went into the house. I did not see the servant or hear what orders she gave to her. Then afterwards we got ready to retire. The front part of the house was dark. I don't know whether the light was lit and turned low in the hall or not. I could not say as to that. The room that was assigned to me was on the left side of the hall, looking towards Delaware avenue, and the rooms on the other side of the hall were occupied by Mrs. Bell. The doors were left open into the hall and a conversation carried on from one room to another; not much of a one, but an occasional remark, as I remember it. We talked back and forth across the hall. When I was ready to retire I went to the door of the room and called out "Good night." Mrs. Bell came to her door and said "Good night," and we kissed
87 each other in the hall. At this point I was undressed and ready to retire. I stepped out into the hall to the door and she came to the door. To all appearances she was ready to retire the same as I was. She had nothing on but a night gown. We kissed each other good-night. After that—it is a rather difficult thing to describe, but I suppose I drew Mrs. Bell into my room. She was there for a short time and retired immediately to her room. She went into my room with me. We walked in. There was no exhibition of any force or anything of that kind. She went in with me. I did not close the door. We were there for possibly ten or fifteen minutes. She did not go into the bed with me but onto the bed. The usual thing occurred, the usual thing that would result when we were in bed together. At that time, on that occasion, I had sexual intercourse with Mrs. Bell, the plaintiff in this action. Then Mrs. Bell immediately left and retired to her room and I stayed in my room. The next morning we ate breakfast and very little was said. Then I went down to my office. I ceased the practice of law as I said, about July, 1886, and went into the theatrical business. I became first a member of Eugene McDowall's company for one season, and then I was with Rhea one season, and then a member of Colonel Simm's company, and then after that a member of Mr. A. M. Palmer's company. I remember meeting the defendant in New York during the horse-show week in 1891, and of having a talk with the defendant that week about this incident which I have just related. I remember meeting Mr. Bell in the café of the Hoffman house, and we sat down at a table, and talked there for some little time, and drank there. I remember distinctly the occurrence. I remember opening the subject of the conversation. I asked him where Mrs. Bell was, and he said
88 he didn't exactly know, but supposed she was in Illinois. We got to talking about his troubles, and during the conversation I intimated to him that perhaps things—perhaps he did not know everything in regard to the matter that he should know, if he did perhaps he would not worry or feel badly, or anything of that kind. And afterwards, I cannot remember distinctly, of course,

just exactly what I said to him, but afterwards I was in hopes he had forgotten the conversation. I told him enough to arouse his suspicions. I told him in substance that I had known Mrs. Bell better than I should have done or ought to have done. That was the first time I had ever informed him of that fact.

Cross examination by Mr. WHEELER:

I have a sister living in Wisconsin. My father and mother are dead. I practiced law with Mr. Weaver two or three years before Judge Brundage joined us. I left in 1886 and did not practice after that. I did not make a success at law, not a financial success. In 1889 I joined A. M. Palmer's company. A year ago last spring I returned to New York from a theatrical trip, and from that time I did no work until I went out with "Shenandoah." I applied to Mr. Frohman for a place, and was an applicant at the theatrical exchange, but was unable to obtain any engagement I cared to take. I did not do a stroke of work in the meantime. I did not make an engagement last year, but I engaged with Charles Frohman, and the manager of that company became security for my outfit. He did it as an accommodation. He engaged me to take the place of Mr. Ed. Ratcliffe, who was leaving "Shenandoah." I had been intemperate. I have always drank more or *elss*. It was Thanksgiving I received word Mr. Frohman wanted to see me, and I was called on to take
89 place of a man that had become sick in the play called "Shenandoah." I had up to that time been under treatment for my habits. I had been to the Keeley Institute at White Plains. I went there in July and stayed until August. I have been there twice. I stayed four weeks, before. I went back the following year. I have drank since leaving. I have been intoxicated since then. I can't remember how many times. "Shenandoah" was a traveling company. I started with them two weeks before Christmas. They just went to Washington, played a week there, then back to New York, and laid off the week before Christmas, and then went to Chicago. I left them at end of first week. I played there one week. I did not notify the proprietor I was going. I told him I was afraid my voice would play out. I could not speak. They came to me and told me I would be relieved. I remained in Chicago a few days, just about a week. I then came to Buffalo. I had on a riding suit when I came to Buffalo. I had on riding boots, the very ones I wore on the stage in one of my scenes. I had riding breeches on. I went to the Iroquois in Buffalo. I stayed one night. I saw Mr. Bell. I went to his office. I think I arrived in Buffalo the 12th. I saw Mr. Bell only a short time on Saturday. I went to the hotel and got a little bit full. I think I was a trifle full when I went to see Mr. Bell. Don't remember whether I met Mr. Seymour that day. I might have met him. I spent the next day with Mr. F. A. Bell at his office. I left that night for New York. I saw Mr. Bell in New York shortly after I went back. I have seen Mr. Bell twice at my house. I remember Mr. Draper coming to see me. So far as I know he came at your

request. He showed the answer in this case to me, and asked me to state what my position was in this matter. I told him I could not say anything. I told him I would look into the matter
90 and let him hear from me. I did not let him hear from me. He wanted me to sign an affidavit that the allegation was not true. I told him I could not sign anything at that time. I would have to see Mr. Bell and find out about this thing, and let him know. I meant Mr. Frederick A. Bell. I knew Mrs. Bell claimed the allegations to be untrue. I did not think you had any business to come to me in a matter of that kind. Mr. Draper had a very delicate task to perform, and he was performing it as well as he could. I didn't think it was any of his business. I thought when Mr. Draper came to me and wanted me to sign an affidavit that he was overstepping the bounds, and I told him I couldn't tell him anything at all; couldn't say anything.

Q. In other words, here was a woman charged with an offense with you, and you stood back and refused even to tell what position you were going to take in the matter?

A. Yes; I said I could not say anything to him at all. When I told him I would look into the matter, I did not intend to look into it. I just simply put him off, and did not look into it. When I was in Buffalo I was a guest in Mr. Bell's family frequently. I was received with confidence and treated with respect by Mr. Bell as well as Mrs. Bell. Yet, knowing that fact, I took advantage of my position to do what I say I did. It was regretted afterward. After that I made only a couple of very short calls, and after Mrs. Bell left I met Mr. Bell occasionally. I don't recall going to dine at Mr. Bell's after Mrs. Bell left. Mrs. Bell left either in August or September, 1882. I never was guilty of this offense more than once. I never told Mr. Bell I was. I do not know how, in his answer, he mentions "adulteries" or "alleged adulteries." I am able to fix the date of this transaction, because it occurred but a little while before Mrs. Bell went away, two or three months, possibly June or the latter part of May. I think it was some time along in
91 there somewhere. It might have been longer than three months, but I think it was some time along the very last of May or the first of June. I did not tell Mr. Bell it was in June. I told him just what I have told you. Mr. Bell asked when it occurred, and I said two or three months before she went away. The latter part of spring. It was two or three months, might have been a little over three months. I don't remember. It could not have been a month over. I gave Mr. Bell the information. He wanted to know when it was. Of course, I suppose the allegation Mr. Bell has made, when it was made, was made upon the information I furnished Mr. Bell in 1891.

Q. Was Mr. Bell very particular to find out the date so he could incorporate it in his answer?

A. No, sir. Mr. Bell never spoke to me about it, except I told him that it was three or four, or two or three months before Mrs. Bell went away. It was probably, as near as I could put it, the

latter part of May, or the fore part of June, along in there somewhere. I cannot tell you which was more probable, May or June.

Q. You say it was warm weather?

A. It was so you could sit out awhile on the veranda. We were out and the veranda chairs were out. It was pleasant until it began to rain. It was not warm, uncomfortably warm. I can't say what I did the next day. I can't say what day of the week it was, but I think it was on Sunday evening. I would not be positive. I cannot fix the date with reference to any other occurrence in my life. Mr. Bell was out of town. I did not know he was out until I arrived at the house. Can't tell how long after that I called again. I took breakfast there the next morning.

Redirect examination by Mr. SEYMOUR:

While I practiced law in Buffalo I played in private the-
92 atricals given by the Buffalo Amateur Dramatic Club. The members of that company came from the very highest circles of Buffalo society. I believe I was considered a success in amateur theatricals, and that was mainly instrumental for my going upon the stage. The past two years the theatrical business has been in a greatly depressed state and hundreds of good actors have walked the streets of New York, greater actors than a great many that are employed. In this interview with Mr. Draper I declined to make an affidavit that I had not had intercourse with Mrs. Bell, and so stated to him. There is a door at the end of the hall, the hall that is in the front part of Mr. Bell's house, where he lived the night of this occurrence, which shuts off the servants' part from the main part. When I came from Chicago here I went to see Mr. Bell at his office and he was engaged the first day that I went there. He told me he would see me in the morning. I saw him in the morning and I talked this case over with him, and stated to him these facts. I had an interview with Mr. Seymour in the Hotel Waldorf in New York a month or so ago. He asked me to state what I knew of this matter and I stated it to him. When I came here from Chicago this time in question, I came because Mr. Bell asked me to come and see him about this matter.

MAGGIE CASHION, sworn for defendant, testified:

I am about thirty-eight years old. I live at 734 South Division street, Buffalo. I was married in 1890. I lived in Buffalo in 1881; in that year, in August, I was Mr. and Mrs. Bell's cook. I applied at the house for service and was engaged by Mrs. Bell, and stayed there until 1883. I was there all the time excepting six weeks from the last week in June to the last week in August in 1882, when I
93 was in Montreal visiting my parents; then I returned to Mrs. Bell and stayed there until November, 1883, I think, when Mr. Bell broke up housekeeping. I saw Mr. Edward M. Bell several times. I couldn't exactly say how many times. I have seen him a few times in the kitchen popping corn; him and Mrs. Bell used to come out in the kitchen popping corn; at such times I

could not say where the defendant, Mr. F. A. Bell, was; I don't know whether he was in the house or out of the house; he didn't come out into the kitchen with them.

Q. Do you recall a time before you went to Montreal in the year 1882, when Mr. Bell spent an evening there?

A. I remember he was there evenings; I couldn't give you no dates.

Q. But do you remember one evening before you went to Montreal when Mr. Bell was there in the house and Mrs. Bell called you and gave you an order?

A. I don't know how long it was before I went away.

Q. Do you remember such an evening?

A. I remember one evening she called me and told me to make up the front bed-room; I don't remember whether it was winter or summer; I don't remember whether it was cold or hot weather.

Q. You remember an evening when she called you and said what?

A. Told me to do up the front bed-room.

Q. What else did she say?

A. She said Mr. Bell was going to stay over night.

Q. Mr. Bell had been there that evening?

A. He was there that evening; I don't remember whether he stayed all night or not.

Q. Did you go and make up the bed?

A. Yes, I put some blankets on the bed; I don't know whether it was winter or summer; I don't remember that part.

Q. Did you get an order that night to cook breakfast for more than one?

A. I don't remember.

94 Q. Did you cook for more than one or two the next morning?

A. I don't remember; I cooked breakfast as usual; I don't remember whether it was one or two; I don't remember whether Mr. Frederick Bell was at home that night; I don't remember seeing him about that evening; I don't remember seeing him that night; I have no reason to think he was not; I don't remember it; I don't remember whether I saw him about the house that evening or not; to the best of my knowledge we had a butler there at that time; that year Mrs. Bell first left Buffalo about the last of August, to the best of my knowledge; I think she was gone two weeks; I couldn't say for sure; she told me she was going to Bloomington, Illinois, to see her mother; she was gone about two weeks, then she returned home; her mother came with her; she stayed three or four days; it was about the first week in September when she returned from Bloomington; then she stayed a few days, when she left with her mother. They never returned to the house after that. Mrs. Bell bade me good-bye when she left the second time. I don't know what she said; she said good-bye to me; she didn't say anything about when she would come back; she intended to stay home, I think; I ain't sure; I wouldn't exactly say what Mrs. Bell did say to me then; I didn't pay much attention.

Q. Did she say anything about leaving Mr. Bell then?
A. She did.
Q. What was that?
A. That she was going for good, she told me—I had a letter from a lady that I lived with in Montreal, and first Mrs. Bell told me I should not leave her, and then after she spoke to Dr. Von Bokkelen, then she told me I had better go to that lady. I told her I had just returned from Montreal and I didn't want to go to any more expense, and she said she would pay my way back. I remember her saying that in her own bed-room; she said it would look better on her part if I were to leave Mr. Bell at that time. She did not say it would look better upon my part. I said I would stay with Mr. Bell, and I stayed with him a year and three months after that. All that time Mr. Bell kept open house. I never saw Mrs. Bell there again. I saw her in Buffalo, once on Franklin street, two years after that; she didn't say anything only she was glad to see me and glad to know I was getting along. I don't remember how long it was before I left for Montreal when Mrs. Bell called me to make up the bed that night. I think it was cold weather. It might have been a month before I left for Montreal and it might have been three. I ain't sure. I remember Mrs. Bell several times asking me to do up rooms. She never asked me to make up a bed stating that Mr. Bell was going to stay all night, but on only one occasion, but whether it was cold or raining, I don't know what reason there was. After Mrs. Bell left for good I called Mr. Frederick Bell's attention to the fact that Mrs. Bell had given me this order one night and that Mr. Bell had stayed there all night.

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Q. And it made an impression on your mind?
A. Well, yes; not at the time, it didn't.
Q. But afterwards?
A. Afterwards—Joseph told me.
Q. Never mind, but afterwards did it make an impression on your mind?
A. I thought over it; yes. When Mrs. Bell used to come into the kitchen, popping corn, she was always very pleasant, pleasant at the time she would come in. She seemed happy and pleasant. Sometimes she seemed happier and pleasanter than she did at other times, and sometimes she didn't. I don't know as I ever noticed any difference in Mrs. Bell's manner when she was with Mr. Edward Bell than when she was with Mr. F. A. Bell, only she was happy and pleasant when she was in the kitchen popping corn. I have had an interview with Mrs. Bell, the plaintiff in this action, this week. She called at my house, at 734 South Division street. She was there about ten or fifteen minutes, so far as I can remember. I didn't look at the time; it was on a Thursday evening, half past five, I think. Before Mrs. Bell went away, in August, she had been home all that summer, as far as I remember. She was at home all the time. I was away six weeks during the summer months. I don't know about her going away. I was only home

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a few days when she went away. Before I went away she had been at home all the spring and summer, so far as I remember.

Q. Do you remember times while Mrs. Bell and Mr. Bell were living together when she did not speak to him for days?

Objected to by plaintiff as incompetent, immaterial and irrelevant.

By the REFEREE: I think it is proper to show the relations of these parties to each other.

Objection overruled; exception to plaintiff.

A. As far as I could see, I thought they were not speaking at times, but I don't know the reason. I remember times when Mrs. Bell didn't speak to Mr. Bell for days.

Q. At such times, what was the expression on Mrs. Bell's face?

A. Sometimes she looked pleasant, and sometimes she looked sad and troubled-like.

Q. Haven't you used other expressions in regard to that?

A. She was excited. Sometimes she looked pleasant and sometimes troubled and excited-looking.

Q. I am speaking of those times when they were not speaking to each other. She didn't look pleasant then, did she?

A. No.

97 Q. And in what was she excited?

A. She would come into the kitchen and want to know where Mr. Bell was, when he passed downstairs; sometimes follow him into the cellar when he would go down cellar for his cigars, and sometimes into the barn, and then she would go into the front part of the house. She looked disagreeable and excited looking. I couldn't say how long this state of affairs would last, because I was not in the front part of the house. I would see her when she came to see me. To the best of my recollection, the longest time I have known any of them to last was a week or three or four days. At these times she always seemed to have a suspicion of Mr. Bell, jealous-like, as far as I could understand, when she would enquire for him. Mrs. Bell at one time started to tell me about her troubles, and I told her I didn't want to hear her troubles. I was there to do her work. She never told me anything about them. At the time I was there Mr. Bell had a butler; the first one he had was William. He was colored. He is dead. I heard Mrs. Bell had had a conversation with William about Mr. Bell. She told him to go and follow Mr. Bell and see where he went to. He went to the club and he came back and told her he went to the club. This was in the evening. Mr. Bell had been at the house, and after he left the house she had this talk with the butler. I have never seen Mr. Bell in company, but as to his manner usually towards Mrs. Bell, I always seen Mr. Bell just the same as he always was, always quite pleasant. I never was in their company in the house because I never waited on them at the table, but when I would see them he was always as usual. I remember an incident when Mr. Bell came to the back stairs and called me. I don't remember whether it was

in 1882 or '81. He told me to come upstairs, and I followed
98 him into her room. She was in her library, lying on the floor, upon her side, full length. It was in the evening. The bed was undisturbed. I observed a bottle and a handkerchief on the bed. I noticed a peculiar odor in the room. As she lay on the floor she seemed to be sleeping. Mr. Bell and I picked her up and laid her on the bed, and we unloosened her waist and put some stuff that Mr. Bell got out of his bath-room, I guess it was ammonia, to her nostrils, and she came to. We rubbed her hands and her limbs.

Q. When she was lifted up and put upon the bed, what was the condition of her limbs?

A. Well, I was excited; I don't know really.

Q. I want to ask you whether she was rigid?

A. As far as I remember she was rigid; yes, sir.

Q. What did Mr. Bell do as she was put on the bed?

A. He did all he could to bring her to.

Q. For how long?

A. Ten minutes, as far as I remember.

Q. What did he do then?

A. He stayed with her.

Q. You said he went and got a bottle?

A. Yes, he went into the bath-room and got a bottle, and took the cork out and put it on a handkerchief, and put it to her nostrils. This was right away after he put her on the bed, and he came right back and put it to her nostrils.

Q. How soon did she revive, then, to the best of your recollection; didn't she come to at once?

A. She made a motion.

Q. At once?

A. Yes, sir. After Mr. Bell uncorked this bottle I know there was a smell of ammonia, or hartshorn.

Q. What did Mrs. Bell do then?

A. She was lying on the bed still when I left the room; I left Mr. Bell and her together.

Q. Did you see her leave the bed and sit in a chair before you left the room?

99 A. Let me see, I wouldn't be sure of that; I don't remember. Before Mr. Bell came to the back stairs to call me I had seen him coming out of the barn, and go through up into the house. Just as soon as he went upstairs, after he had come through from the stable, he called me.

Q. When you saw Mrs. Bell lying on the floor, what was the odor like in the room?

A. I couldn't describe it; I thought it was chloroform; I never knew the name; I never smelled it before; I was frightened; I thought Mrs. Bell was dead; yes, sir, I thought it was chloroform; it is a peculiar odor.

Q. Was there any impression made upon your mind as to whether or not Mrs. Bell was shamming?

A. Well, I thought Mrs. Bell got over it very quick; I thought

she was worse than she was, but she got over it so quick; that is the only thing that I thought.

Q. Did you ever hear Mrs. Bell say anything to Mr. Bell that was unpleasant, or that would tend to hurt his feelings?

Objected to by plaintiff as leading.

By the REFEREE: Have you ever heard anything between the parties, Mrs. Bell use an expression to Mr. Bell that was unpleasant?

A. I never heard her say anything to him, but I heard her say to others.

By the REFEREE: Do you mean in his presence?

A. He was in the house; not to himself, she didn't.

By the REFEREE: Was he there when Mrs. Bell said these things?

A. Yes, sir; he was not in the room.

Direct examination resumed by Mr. SEYMOUR:

I have been present when Mrs. Bell acted unpleasantly to Mr. Bell; he offered her wine at the table and she would not take any, and she acted ugly; I don't know as it was unpleasant; I don't know; I have seen her slam doors around the house when
100 she left the room where he was; I don't know whether it was an accident or willful; she has done it as she left the room where he was; when I lived there it was the habit for the front part of the house to be usually closed by Mr. and Mrs. Bell herself; when Mrs. Bell was out Mr. Bell did it; George used to sleep there, but William went home nights; the servants didn't close the front part of the house; it was always done by Mr. or Mrs. Bell; the servants would be in their part, and go to bed when they chose; in the front part of the house, where Mr. and Mrs. Bell lived, there is a hallway upstairs; the back part is closed off by itself, and the servants' rooms are in the back part; as you stood in the front hallway and looked towards the street, Mrs. Bell's room was on the right-hand side, and the guest rooms were on the left.

Cross-examination by Mr. WHEELER:

I was cook; my duties kept me in the kitchen; at times for a year, I made up Mrs. Bell's room and bed, and then they got a girl; then my duty was entirely in the kitchen; as a rule I did not even wait on the table, and of course I did not have the opportunity others had of observing the relations of Mr. and Mrs. Bell; there were times when Mrs. Bell appeared troubled about something, but I do not know what; I don't know whether she had just cause for it or not, because he always was the same at all times, and I do not pretend to say here; she was always ladylike in her demeanor; always very nice; at times she would be kind of excited, but she was always nice to me; she was excited, as though she was laboring under some secret trouble, but she never disclosed her troubles to me; on the occasion I made up the bed I remember getting bed-clothes out of her clothes-press; I never knew of Mr. Bell
101 being there but one night, and I remember getting bed-clothes to put on the bed; I got extra blankets, because it was cold,

I think; that is my impression; my present recollection; to the best of my recollection it was cold weather, and I put on extra blankets to make it comfortable; some one of the butlers were there at the time; which one I can't say; we had three different men; the third was a white man; I don't remember his name; the first butler's name was William, and the next George; he was a colored man; the next was the white man; the white man was not there more than a month, about a month; this occurrence was while George, the second man, was there; Maria came in May, and she took the place and did the work that some of the butlers had done before; prior to her was the white man, and then prior to the white man was this man George, and prior to him was William, who is dead.

Q. Did you ever see anything improper, in any way, shape or manner, in the conduct of Mrs. Bell toward Mr. Edward Bell?

A. Nothing in the way of being dishonorable to him.

Q. She treated him absolutely as she did others?

A. She was excitable at times.

Q. You mean excited with him?

A. Well, I don't know who she was excitable with; she acted nervous; I don't call that improper; I never knew anything improper with Mr. Bell; I remember the time that Mrs. Bell left, and they separated; I remember Mrs. Bell's going to Bloomington; before she left she said she was going for a visit, the first time, and after she was gone I remember some trunks coming in, and they were packed up by Mr. Bell; I mean her clothing and wardrobe; I remember her piano going out of the house, but I don't remember her trunks going; Mrs. Bell came back with her mother; she returned at nine o'clock in the evening; I remember her coming to the back of the house; I remember my greeting, and saying, "Mrs. Bell, we are glad you have come back before your things are gone;" I went to Pennsylvania, to testify for Mr. Bell in the case over there, to Brookville; I was sworn and testified at Mr. Bell's request; Mr. Bell was present; Mr. Seymour was present; they asked me nothing about packing up Mrs. Bell's things; I don't remember whether I volunteered to tell them about it, or speak about; after Mrs. Bell came back with her mother from Bloomington, she went up into the house; she went upstairs; I saw her again in the kitchen that night; I saw her the next morning; I did not see Mr. Bell that night; he was in bed; at least I don't know whether he was in bed; he was in the house; I don't know whether Mrs. Bell gained admittance to his room or not; the next day Mr. Bell went away. I don't remember whether it was a week or more when he came back; he did not come back while Mrs. Bell remained there; I don't know where the piano was taken.

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Redirect examination by Mr. SEYMOUR:

To the best of my recollection the butler that was there the night when Mr. Edward M. Bell stayed there was George, the second one; I know it was a colored butler; I know it was not William; Maria

came in May, in 1882; I don't remember of testifying in Pennsylvania that the night that Mrs. Bell came back from Bloomington, in September, that Mr. Bell was at Niagara falls; he was away when she went away.

Q. How did you happen, as cook, to make up the bed that night for Mr. Bell?

A. Mrs. Bell employed me to do up her rooms during the time she had a butler. The butler used to do it, and they called him an old woman, and Mrs. Bell asked me to do up the bed-rooms, the man to do all the rest of the work; of course it was my duty to do up the bed-rooms any time she asked me during the time the
103 men were there; I don't remember any other reason why I made up the bed that night, unless it was the bed was not dressed; I don't remember of testifying in Pennsylvania on the trial of the action there between Mr. and Mrs. Bell that the reason why I made up that bed that night was because this girl Maria was absent, or that the reason why this bed was made up by me was because it was Sunday night, and it was Maria's night out; I don't remember whether it was Sunday night or Saturday night, but I remember of making up the bed, Mrs. Bell coming and asking me to make up the bed; I don't remember where Maria was that night; when Mrs. Bell saw me, on Thursday of this week, she asked me if I had been spoken to about this suit, and I told her no; I had been told nothing about it; I denied it then; I wasn't on my oath, and I told her I didn't know anything about it; that was all she did ask me; she asked me how long I was married, and she asked me if I remembered coming home.

Recross by Mr. WHEELER:

I made up the front bed-room. It was the pink room that was opposite to Mrs. Bell's room. It was the further room. The blue room was opposite Mrs. Bell's room.

Redirect by Mr. SEYMOUR:

When I made up this bed there were no pillows and no bed clothes on it, only a cover, and I put bed clothes and blankets, spreads and sheets on. Mrs. Bell never had the beds dressed, her extra beds, unless she was using them.

By the REFEREE:

Q. Who were the servants in the house that night, when you made up that bed?

A. As far as my best recollection, was a butler we had.

104 Q. In the house that night?

A. Yes, sir.

Q. You were there?

A. Yes, sir, I was there.

Q. Was there any other servant employed in the family?

A. No, sir, Mr. Bell never kept any other servant but a butler, a coachman and a cook. The butler's name was Joe Koons.

Q. Tell me just where this room was that you made up the bed with reference to Mrs. Bell's sleeping-room.

A. It was opposite her library; it was the front bed-room, and her library was on one side and this front room was on the other; her bed-room was in the back, on the north side and across the hall. I couldn't tell how many feet it was; it was the farthest room in the house away from that bed.

By Mr. SEYMOUR:

Her library was directly opposite this spare room, and the library opened into her room by an archway, so she could step right from the bed-room into the library. I don't remember whether there was anything hanging up between Mr. Bell's room and the library in the shape of a curtain; it was simply an archway. I think the door of this library into the hall was opposite the door of the spare room. I ain't sure. There was a door going out from the library into the hall and there was a door from her bed-room into the hall. The door was right opposite the spare room I made up, from the library.

ANSLEY WILCOX, sworn for defendant, testified:

I am a lawyer and reside in Buffalo. I resided here in 1883; this deed, dated November 17th, 1883, from Frederick A. Bell and Mary G. Bell, his wife, to Alfred Bell of Rochester, was prepared under my direction, at the request, I think, originally, of Mr. Rumsey. Frederick A. Bell probably in the first place spoke about it to Mr. Rumsey. I should say that I did not receive any in-
105 structions from Mrs. Bell about drawing this deed. I don't think I saw Mrs. Bell about it, at all. I cannot say positively that I advised Mr. Bell in relation to the description to be used in describing Mrs. Bell's residence. I think I drew it out of my own head. That is my recollection of the fact about it.

By the REFEREE: In other words, you assumed the residence of the parties was Buffalo, and directed the clerk to draw it in that way?

A. My recollection is, I directed it to be drawn in this way. As to the residence of Mrs. Bell, I put it in, not knowing where Mrs. Bell was, because I had no knowledge of Mrs. Bell having changed her residence.

Cross-examination by Mr. WHEELER:

I live in the same house now, myself. The diagram of the second floor of the house in question is approximately right, with the exception of the staircase in the hall is wrong. It is about eighteen feet from that door diagonally across to the other door, and the hall itself is nine feet eight inches wide.

FRANK A. RODGERS, sworn for defendant, testified:

I was the proprietor of the Genesee hotel in Buffalo up to the 7th of July, 1890, from April 1st, 1889. I remember the rooms Mr. Bell occupied there. They were on the third floor. This diagram is a

correct representation of his suite of rooms. The door that
opened when the bells were rung from his room opened into
front parlor on Genesee street, and this door was always locked w
a bolt on the inside. This door into the library was always loc
and bolted. I had occasion to go into these rooms more or less,
not any more than any other rooms in the house, and I kn
106 this to be so. In relation to the front parlor, the library,
bed-room, the location of the bed in the bed-room, and
bath-room, this is correct.

Diagram offered in evidence and marked Defendant's Exhibi

I don't know as I remember the head hall man by the name
Doyle, by his name. As proprietor of that hotel I never gave a
orders to the head hall man that none of the bell boys should answ
calls to Mr. Bell's room. It was the custom there that whenever
boy's turn came that was on duty he answered the bell. It did
make any difference whose room it was. It was not custom-
keep the front door locked of the ladies' entrance unless it was
severe cold day in winter. We always kept it open in warm weath
From the ladies' reception-room on the first floor to the hallway, t
doors opened. One opens right in front of the elevator and t
other opens into the hall coming from the door of the ladies' e
trance. That door opening into the hall was never locked.
might have been closed sometimes, but not very often. We made
a point to keep it open. I remember a lady that used to call at t
hotel, by the name of Mrs. Martin. Whenever she came to the ho
she always enquired for me, and if I wasn't there she never went
to Mr. Bell's room to my knowledge, and if I was there she alwa
wanted me to go up there with her, except when Mrs. Wisner ca
with her, and when Mrs. Wisner came with her, why, they went
together. When Mrs. Martin called alone I used to go with her
Mr. Bell's room and stay as long as she stayed. At such times M
Bell was sick; sometimes when the visit was over I would leave wi
Mrs. Martin, and sometimes she went out alone and I stayed.
never went out and left her there.

107 Cross-examination by Mr. WHEELER:

The door of the ladies' entrance to the hotel was locked abou
eleven o'clock until the washwomen came on in the morning, an
they unlocked it. No one could be admitted after that unless the
rang the bell. I say eleven o'clock, it might be later. It was afte
the theaters were closed. This door could not be opened unless on
went inside and unlocked the bolt. Those inside could open it an
pass out into the hall easy enough at any time. All I mean to sa
is that on some occasions Mrs. Martin called there, and I went u
to Mr. Bell's room with her. I have no knowledge of her comin
there at any other time. That is all I mean. I said Mr. Bell wa
sick, probably been drinking a little up in his room by himsel
drinking hard at times; that is what I mean when I say he was sick

By Mr. SEYMOUR: I wish to recall Mr. Edward M. Bell, and as

him one question. I think it is already in the case, but I simply wish to ask him in regard to that night when this incident occurred whether or not that was the only night he had ever stayed at this house.

By the REFEREE: I think he stated that.

Defendant rests.

MARIA TOOMAY, recalled by plaintiff.

I know Mr. Edward M. Bell, who sometimes used to visit Mr. and Mrs. Bell on Delaware avenue. I know him by sight. I went into the employ of Mr. and Mrs. Bell in May, thirteen years ago last Thursday. I done the upstairs and dining-room work. I mean the chamber-work and the dining-room work. I made up the beds and waited on the table. I stayed right along until the separation, and Mrs. Bell went to Bloomington, doing the same class of
108 work, as soon as I learned the going way of the house. Mrs. Bell went home after my first going there. She stayed about two weeks, then she came back. A lady and gentleman by the name of Sayles visited at the house after her return. When Mrs. Bell left shortly after I came there she went to her home at Bloomington, Ill., and stayed about two weeks, then came back, and after her return Mr. and Mrs. Sayles came and visited. I can't remember just how long after her return. I don't remember how long they visited. After they went away Mrs. Bell made a visit to Bloomington. That was in June, I think. It must be the last of June.

Q. When was it with reference to the separation?

A. That was September.

Q. Do you remember Mrs. Bell making a visit just before the separation?

A. She made a two weeks' visit. I almost think it was the last of June that time, and then she came home; I said that the other day. She let Maggie go for a six weeks' trip and that brought the time into the first of September when she went to Bloomington. She went twice to Bloomington before the separation and came back and found her things packed, and when she left the next time she went away for good. While I was there Mr. Edward M. Bell never stayed at the house over night to my memory. He never took breakfast there to my memory. I have no recollection about it—not a bit—I don't ever remember Ed. Bell sleeping in that house.

Cross-examination by Mr. SEYMOUR:

Q. You didn't know very much of what was going on in the house, did you, outside of the kitchen part?

A. Why, the house was very quiet; there was not ever very much going on.

109 Q. Did you ever live with anybody that you knew as little about as you do of Mr. and Mrs. Bell?

A. You see I didn't live there only a short time.

Q. How about that in comparison with other families?

A. That was about the quietest family I ever lived in.

Q. How about its being quiet as to your knowing what there was being done in the family part of the house?

A. They didn't receive any company or anything of that sort.

Q. You don't know anything about it, one way or the other?

A. No, I don't know anything about it.

Redirect examination by Mr. WHEELER:

I was there about a week when Mrs. Bell first went away.

Q. How long after you came there did Maggie take this six weeks' vacation?

A. Well, I was there a week. Mrs. Bell was gone too, and Mrs. Bell was home again, well, I will say about six weeks, as near as I can remember, that Maggie was home. Maggie went home in the middle of July, and she did not come back until the end of August; so that made six weeks. Maggie was the cook while I was there. There was another cook during her absence—the six weeks. She was Abby Barrett. I did not have any day out. I did not have much of any night out. I went every Sunday to church, morning and evening. The cook and I would have alternate Sundays. There was nothing to be done with the chamber-work until I got back, about half past nine or ten, never later than that.

Recross:

If a bed had to be made up before I got back at 9 or 9.30, the cook would have to do it.

Redirect:

But I would have to make up the bed next day and wait on the table next morning.

110 EDWARD B. GRIDLEY, recalled for plaintiff:

I remember a visit made by Mrs. Bell in Bloomington some time in May or June, 1882; to the best of my recollection it was the last week in May, 1882; she stayed about two weeks and then returned to Buffalo. Prior to that, during the winter of 1882, my mother was home in Bloomington. I am not positive about that. She was in Buffalo during the winter of 1882.

MARY G. BELL, the plaintiff, sworn and testified:

I am the plaintiff in this action, and acquainted with Mr. Edward M. Bell. The book shown me is my diary for 1882. It is one in which I made daily entries, probably not every day, because I sometimes would neglect putting in every day, but in that book I was accustomed to make entries from day to day. I entered them correctly. I do not think I could positively testify to the dates of transactions and occurrences in 1882 without those entries, but by reference to that book I am able to do so. My mother made me a visit in 1882. She was at the house in January and February, and I think she went home in March.

Q. Won't you refer, if you please, to your diary under date of March, 1882?

(Witness refers.) A. There it is, sir.

Q. Is there any entry there in reference to your mother's departure? Refer to the book to refresh your recollection and testify to what you did on that day.

Mr. SEYMOUR: I object to that; to any evidence against us contained in that journal, and also on the ground that it is incompetent, irrelevant and immaterial. I object to the witness reading from the journal. She is prohibited by the statute from testifying against her husband.

111 By the REFEREE: She is only permitted to read from the journal to refresh her recollection.

Defendant excepts.

A. There is an entry there in reference to my mother's departure. (Witness reading from diary.) "Nice, pleasant morning. I took Fred down in phaeton. Joseph walked down and drove Billy back, as I had some errands"——

Q. Who is Joseph?

A. The coachman.

Q. And what was "Billy"—the horse?

A. The horse.

WITNESS: "Stopped at bank, drew out $100 to take home with me. Telegraphed Ned that they would have to leave today"——

Q. Who is Ned?

A. My brother.

Mr. WHEELER (reading): "Stopped at market. Stopped to say good-bye to Mary Utley."

Q. She was a friend of yours?

A. Yes, sir, Mrs. Charles Utley of Buffalo.

Q (Reading:) "Came home, finished packing, had our lunch. Went in carriage to office, where Fred met us and went to depot with us. Got a state-room, nice and very comfortable. Fred saw us off. Mother and I took supper at Cleveland. Slept pretty well." Are all those entries true?

A. It is, sir.

Mr. WHEELER: It goes on and speaks of her journey.

By the REFEREE: There are entries showing she remained in Bloomington with her mother down to what time?

Mr. WHEELER: March 30th.

By the REFEREE: Is there an entry showing she left Bloomington for Buffalo?

Mr. WHEELER: Yes, sir. Tuesday, the 28th of March, is the entry I refer to.

112 Q. Did you leave Bloomington on that day?

A. We started on the "Denver" for Chicago. It must have been after leaving Bloomington, because the "Denver," as it is called, goes down to Chicago and passes through Bloomington.

Q. (Reading:) "Went to Gossage's."
A. That is a dry-goods firm where we had our dresses made.
Q. (Reading:) "Had dresses fitted. Did not sleep very well at Grand Pacific, as the wind blew very hard all night. The next day, March 28th, Albert met me." Who is Albert?
A. My little brother.
Q. (Reading:) "At Gossage's. He saw me safely on train for home. I left at 5.15 on Lake Shore for Buffalo. Slept pretty well on cars. Retired at 9.30." Is that correct?
A. It is.

Mr. SEYMOUR: This is all under my objection.
By the REFEREE: Certainly.

Q. Now, March 30th, can you tell me where you were, or what you did?
A. Yes, I was at Cleveland, and breakfasted at Cleveland. A lady friend from New York was on the train, and she came and sat with me. I remember that very well. It was Mrs. Bemis.
Q. (Reading:) "Had her come and sit with me. Arrived at depot. Fred met me and seemed glad to see me. Had a nice lunch. Mrs. Ganson had flowers on table." In the evening what did you do?
A. (Referring to diary.) "In the evening Fred and I talked, and we retired at about nine that evening."
Q. Did any one call in?
A. Mrs. Walter Cary called in the afternoon.
Q. What was done the next day?
A. I cannot state unless I should read it.
Q. Go on and read it.
A. "The next morning"——

113 By the REFEREE: I hardly think that course of examination is permissible. All you want Mrs. Bell to do is to refresh her memory.

Q. That day did you drive to the asylum with Fred?

Mr. SEYMOUR: Why can't you leave that out? It seems to show she was here.

Q. After dinner what occurred?
A. "Mrs. Ganson called. Fred and I drove out to the asylum to see Harry Lewis. Fred went in. I held the horses. Had a nice drive. Returned home. After dinner I read to Fred. He slept. We retired about ten. Lovely moonlight night."

Mr. SEYMOUR: Is that all competent to go in?
By the REFEREE: If Mrs. Bell can show she was not possibly in a position, and that the incident claimed could not have occurred, she has a right to do it.
Mr. WHEELER: That is the object of this evidence.

Q. (Reading:) "April 1st: Lovely bright spring-light morning. Drove down with Fred. Joseph walked down and drove me back.

Mrs. John Bush called in the evening. Fred didn't go to club. Went with me to see Mrs. Stevenson." Was that true?

A. Yes, sir.

Q. (Reading:) "Sunday, April 2d: After dinner," it says, "Kate, George and Alfie called." Who were they?

A. Mr. Bell's sister and her little son, Mrs. George H. Lewis and her husband.

Q. (Reading:) "After they left, about six, Fred went to club for about two hours. I went over to call on Mrs. Brown. They both leave for the South tomorrow." Who is that?

A. Mrs. Nathaniel Brown of North street.

Q. (Reading:) "Monday, April 3d: Fred brought Alfred McCall up to dinner. He stayed all night. In the evening he and
114 Fred went to see Emmett." Who was Alfred McCall?

A. I think he was a cousin of Mr. Bell's.

Q. Do you know where he lives?

A. No, sir; I do not.

Q. (Reading:) "Tuesday, April 14th: Mr. and Mrs. Charles Ganson spent the evening with us." They live on the corner of North and Delaware avenue?

A. Yes, sir.

Q. (Reading:) "Wednesday, April 5th: Made a mistake. Commenced today and not yesterday. Thursday, April 6th. Went down with Fred in phaeton. He came up to lunch. Left for mine at two. I went in carriage to depot with him, and then attended cooking school, and then went to Mary Utley's to dinner; came home in her carriage about nine. Had a sore throat and headache. Received invitation to Mrs. Hamlin's Tuesday night. April 7th, Friday: In the evening I went with Mrs. Charles Ganson down to hear Mrs. Parloa lecture on marketing. Very good. I was much interested in it. Received Easter card from Colorado Springs. Saturday, April 8th: Went to market; went to bank and drew $50.00. Went to Mrs. White's sale of fancy articles, and I bought two aprons and servettes. After lunch went in bus to cooking school and Joseph came for me in carriage. Ned Bell took dinner with me, and after he left Mr. McNabb and Robert called." Who were they?

A. I think Mr. McNabb was in Mr. Bell's office, and Robert was Robert Chisolm, some relation of Mr. George H. Lewis.

Q. (Reading:) "Sunday, April 9th, Easter. I attended church. Church looked lovely. Came home; had lunch. In the evening took dinner with Mr. and Mrs. Ganson. April, Monday, 10th: In the evening Mr. and Mrs. Ganson called. I felt badly with
115 sore throat. Dr. Hoxsie called and said I had something like quinzy. At midnight Fred surprised me by arriving home. I was not expecting him until tomorrow night. Tuesday, April 11th: In afternoon Mrs. Dutton and Mrs. Bronson of Rochester, and Mary Utley all called. In the evening Fred had sherry and champagne; drank freely of both. Afterwards wanted to go down to Mrs. Dutton's. We all went down. He and Emma did most of the talking. We returned at 10.30 o'clock. He and Emma played

billiards. Wednesday, April 12th: We had lunch, and when it was time went to depot. Fred went with us and bought her ticket (referring to Mrs. Bronson of Rochester). In the evening Fred drank five glasses of sherry. We went to the children's fancy dress party at Goodell hall. Mr. Palen invited us. There until 10.30. Thursday, April 13th: Had Dr. Hoxsie. Fred came up at ten minutes after five and found me crying and sick. I took medicine, and in the evening went to theatre to see Mlle. Rhea with Fred. Friday, April 14th: Invited Ned Bell to dine with me and to go and hear Rhea in 'Much Ado About Nothing.' He came, and we went to the theater."

By the REFEREE: That is correct?

A. Yes, sir.

Q. (Reading:) "Saturday, April 15th: Went to depot. Fred came up to lunch. Had lunch and Fred drank a bottle of beer and then went to sleep on the lounge. Says he is going to New York Monday night. Won't let me go with him. Went downtown a quarter of four. *He* came up late to dinner."

Mr. SEYMOUR:

Q. The *he* is underscored. Whom did you refer to?

A. Mr. Fred Bell. It is rather a custom of mine to underscore words.

Q. That is the only *he* that is underscored?

A. Yes, sir.

Mr. WHEELER:

116 Q. (Reading:) "Sunday, April 16th: Fred and I took a drive, and after our return George, Harry and Robert called." Who is Harry?

A. Harry Lewis, Mr. George Lewis' brother.

Q. Who was "George"?

A. George H. Lewis.

Q. And who was "Robert"?

A. A cousin or nephew of Mr. Lewis.

Q. (Reading:) "They left about six. Fred said he was going to club. I said I would go with him. I walked down, went to Tifft house and called on Mrs. Bingham. They were just going in to supper. Made me go too. Stayed until half past nine. Ordered Miller's coupé and came home. Fred hadn't come yet. I waited around until I heard him come in, at twenty minutes after ten. He came in and got a lunch. I took two glasses of beer and was terribly sick at my stomach."

Q. (Reading:) "Monday, April 17th: Left at two p. m. He went to depot with me. Got me a ticket. Kissed me. Arrived at R. safely. Sadie met me. In evening Mr. and Mrs. Babcock called."

A. That was at Rochester. I called on Sadie Breck.

Q. Then were you in Rochester until Thursday, the 20th?

A. Yes.

Q. (Reading:) "Arrived in Buffalo in time. Didn't let them know I was coming, so came up in stage, and found two letters from

dear ma. It rained after three. Went in carriage to Miss Nicell's. Went from there to Chamot's. Came home. Had dinner. Afterwards sat down and done some mending on Fred's drawers." Is that what you did in the evening?

A. Yes, sir.

Q. (Reading:) "Friday, April 21st: Went to cooking school. In afternoon took carriage and went out to see Mrs. Adams." Who was that?

A. Mrs. James Adams, on Ferry street.

117 Q. "Came and got Mrs. Walter. Went downtown; asked Ned up to dinner. George went to colored ball." Who was George?

A. The colored butler.

Q. Who was Ned?

A. Edward M. Bell.

Q. Next was Saturday, April 22d: "Fred left this morning early and knocked on my bed-room door before I was up. He said George hadn't arrived yet. He said, 'I guess he has left for good.'" You refer to the colored butler?

A. Yes, sir; he hadn't arrived in the morning.

Q. (Reading:) "Went downtown in carriage four p. m. Came back and found George up in his room, drunk. After dinner Fred went to meeting of Beaver Island Club Association. Afterwards. went to Buffalo Club. Didn't get home until after half past twelve. Sunday, April 23d: George waited on table, but looked so guilty. George said he would go and ask Mr. Bell to pay him. Fred told him to go and do up his work and then told him he wished he would get a good place, which he did not doubt he would. Kate, George, Alfie and Harry called. About a quarter to ten he came in. Said he had been to the club. He had some lunch and went to bed. Tuesday, April 25th: Fred came home at half past five with Joseph, in phaeton. After dinner he went to Tifft house to make a call on a gentleman from Philadelphia, a Mr. Goodman." Wednesday, the 26th, and Thursday, the 27th, no entries. "Friday, April 28th: Fred and I tried new buggy this afternoon for the first time. It is very pretty and rides nicely. Saturday, April 29th: Took a drive in the new wagon; in the evening Fred went to club and remained until eleven. George and Kate went this afternoon to Rochester. Sunday, April 30th: A pleasant day. Did not go to church. Fred went in carriage to depot to meet Tillie."

118 Who is Tillie?

A. Tillie is Mr. George H. Lewis' sister, I think.

Q. Do you remember her other name?

A. No.

Q. "Harry and Robert came up to dinner, after which Fred took Harry out in new wagon. Tillie took a nap. Monday, May 1st: Fred and I took a drive in new wagon. In the evening Dr. Van Bokkelen called. The new butler came to work for us today. Robert was down. Tuesday, May 2d: Fred didn't come up until after six. He had been taking a little. Said he had not been doing much this afternoon but fooling around. Said he played pool at

the City Club and rode as far as the Buffalo Club and walked hom
from there. He had beer for dinner. Mr. Ganson called after h
left Fred and I went over to see Joseph's baby. It was very sick
Was that the coachman?

A. Our coachman.

Q. "Wednesday, May 3d: In the afternoon we took a drive i
the new wagon. In the evening Fred went to the club again
Goes to mines tomorrow with George. While he was at club
went into Mrs. Stevenson's. Mrs. Roesser called while I was ove
there." Who was she?

A. Mrs. Henry Roesser. Mr. Henry Roesser was at one tim
manager of Pierce's Palace hotel, where we were living.

Q. "Thursday, May 4th: Fred packed his valise. Joseph too
him down to office. Said he wouldn't come to lunch, as I wa
going to Mrs. Bush's to lunch. George and he go to mines at tw
o'clock. Joseph took me in phaeton to Mrs. Bush's. Mrs. Georg
Laverack and others sat down to table. Came home at four o'cloc
Called in to see Mrs. Scatcherd, to see how Mr. S. is. Mrs. S. sai
he was better. Friday, May 5th: In the evening made a square fo
my quilt. Saturday, May 6th: Came home to dinner, afte
119 which I went to Mrs. Stevenson's until nine. Came hom
and went to bed. Invited all the boys in the office up t
dinner tomorrow. Sunday, May 7th. After they had gone half a
hour, who should call but Mr. and Mrs. James Junk, of Liverpoo
England." What time did you dine on Sunday?

A. I think it was near noontime, because we always had luncheo
in the evening.

Q. Have you any recollection how long the boys stayed?

A. Generally stayed an hour or two, and sometimes longer.

By the REFEREE: From hearing that entry and the circumstance
that those people were to dinner, does that refresh your recollectio
as to anything that occurred from that time forward in the evening

A. No, sir.

Q. "Monday, May 8th: In the evening I went over to Mrs. St
venson's and worked on my quilt, Mrs. Stevenson helping. Cam
home at a quarter after nine. Tuesday, May 9th: In the afternoo
went in phaeton to Mrs. Adams'. Came home. In evening Ne
took me to see the 'Two Orphans,' Kate Claxton and a Miss Drak
of Buffalo."

Q. Did they play in that play?

A. Yes, sir. He asked me to go because it was a Buffalo girl tha
was going to play.

Q. "Wednesday, May 10th: In the evening I sat down an
worked on my patchwork. Thursday, May 11th: At three o'cloc
the telephone rang and Mr. Bell telephoned for Joseph to come dow
for him at half past five."

By the REFEREE: From that you know now, do you, that M
Bell came home at that time?

A. Yes, sir.

Q. "He went to bed. I sat alone in the parlor to nin
120 Friday, May 13th: Fred came up about a quarter to si
After dinner went to a reception at Buffalo Club, given t

old Mr. Fitch. He said he would be home at eleven. Told me to go to bed. I did, and he came home at a quarter to one. Saturday, May 13th: Fred came up at about half past five. In evening we went to San Francisco Minstrels." Is that so?

A. Yes, sir.

Q. "Sunday, May 14th: After dinner we went for a drive. When we got home Fred went to club and stayed until half past nine. Goes to Rochester tomorrow, to be gone until Wednesday. Monday, May 15th: In the evening I took my patchwork and went over to Mrs. Stevenson's. About nine came home and went to bed. Tuesday, May 16th: No reference to evening. Wednesday, 17th: Fred arrived home from Rochester. Thursday, May 18th: Fred went to mines this afternoon with George. Friday, May 19th: No entry about evening. Saturday, May 20th: Fred returned from mines this evening. Sunday, May 21st: In evening walked over to George's." That is Mr. Lewis?

A. Yes, sir.

Q. "Walked back. Fred had to feed and water the horses. Monday, May 22d: Fred came up early and stayed with me all evening. Going to see dear ma and sweet home tomorrow. Tuesday, May 23d: Took Fred downtown. Joseph took me in carriage, to depot. Stopped at office, and Fred went with me to depot. Mr. Cutter and son and daughter, and Mr. Van Bokkelen went at the same time."

By the REFEREE: You went to Chicago on the way to Bloomington?

A. Yes, sir.

Q. "We took supper at Cleveland. I retired about half past eleven." Is that the day you left for Bloomington?

A. Yes, sir.

121 Q. Do you remember when you returned from Bloomington on that trip?

A. I am not positive, but it seems to me it was the 7th, 8th, or 12th of June. I don't remember.

Q. Under June 9th there is an entry: "Left 5.15 for Buffalo." Is that so?

A. Yes.

Q. "Saturday, June 10th. Arrived at Buffalo on time. Fred met me. We went out for a drive. In the evening he went to the City Club, to a business meeting, he said. Told me to go to bed. I went over to Mrs. Stevenson's for a little while and came home and went to bed. He came home at ten minutes after ten." Is that true?

A. Yes, sir.

Q. "Sunday, June 11th: In the afternoon went for a drive. Stopped at George's and Kate's. In the evening the boys called. We stayed on the piazza until nearly nine." Who were the boys?

A. We generally spoke of the boys; they were Harry Lewis, Robert Chisholm, Mr. McNabb and Ned Bell. They often came together, and sometimes they didn't.

Q. "Monday, June 12th: Took a drive." No reference to the evening. Tuesday, June 13th, no reference to the evening. "Took

Fred down in the morning." Wednesday, June 14th, no reference to the evening. "Friday, June 15th: Fred went to Rochester on the early train. Came home and had lunch; at about half past five came up; after dinner we went for a drive. Spent the evening at home; he complained the first thing about the screens at the windows being changed." Who do you refer to by saying "he"?

—. ——.

Q. "Saturday, June 17th: Took Fred downtown this morning. After dinner we drove in the phaeton with Billy and Polly." What were Billy and Polly?

A. They were the two horses.

Q. "Came home. He immediately set out to club. I went
122 up to Mrs. Tripp's. Mrs. Smith came home with me. Fred returned from club at twenty minutes to twelve. It was raining. Sunday, June 18th: He went out to barn and watched horses clipped. After dinner went down to the office. I went over to see Mrs. Brown. He came home a little after I did, at half past five. We took a long drive. In the evening Mr. H. Richmond and Colonel Robert Jones called. Fred packed his satchel before going to bed, and in the night had a thunder shower. Monday, June 19th: Fred left at eight. I took him down in the phaeton; came home. Went to call on Mrs. Charles Ganson, and from there to Dexter Rumsey's. Tuesday, June 20th: Went to depot for Mr. and Mrs. Sayles. Wednesday, June 21st: Mr. and Mrs. Dexter Rumsey called." Where do Mr. and Mrs. Sayles live?

A. Providence, Rhode Island.

Q. Very old friends of yours?

A. Yes, sir, very dear and old friends.

Mr. SEYMOUR: This is all under my objection.

Q. Mr. and Mrs. Sayles were at your house that day?

A. Yes, sir.

Q. What rooms did they occupy?

Mr. SEYMOUR: This is under my objection.

By the REFEREE: Yes.

A. The guest chamber opposite our bed-room.

Q. That is the room mentioned by Mr. Bell?

A. The blue room was the room opposite our bed-room, and the pink room was in the front part of the house, and our room was in the back part of the house. This best-guest's chamber was also the back one.

Q. During their stay there did they occupy that room over night?

A. Yes, sir.

Q. "Thursday, June 22d: At four went to Niagara Falls; returned at 11 p. m." Is that correct?

A. Yes, sir.

123 Q. "Friday, June 23d: After lunch we went to Ferry street where we met Mr. and Mrs. Rumsey, where we went to Fairwood. Fred arrived at ten. Came up to lunch. We came up

at seven. In the evening we sat on the piazza and visited. Mr. and Mrs. George Williams called. Saturday, June 24th: Had dinner at six and a half p. m. Mr. Sayles returned from Lockport at six. We sat on the piazza until a thunder shower drove us in. Sunday, June 25th: Fred went down to Buffalo Club. Came back, invited Mr. and Mrs. Lewis to drive. We had lunch about ten, of teal ducks. Monday, June 26th: Fred took his satchel and took Mr. Sayles to depot. He goes to mines at two. Mrs. Sayles packed her trunk this morning. We drove to market. Took Mrs. Sayles to depot. They left at 2.25. Fred left by the W. N. Y. & P. R. R., at two. After dinner went to see Mrs. Stevenson; met Miss Bemis there, who was calling also, and came home. Mr. and Mrs. Ganson had called. Retired early."

Q. That was the day Mrs. Sayles left for home?

A. Yes, sir.

Q. "Tuesday, June 27th: After dinner sat on piazza. Mr. McNabb, Robert Chisholm and little George called, also Judge and Mrs. Daniels."

Q. What time did you have dinner?

A. In the evening, about six o'clock.

Q. "Wednesday, June 28th: After lunch went in carriage to Church Home festival; stopped to see Mrs. Brown. Took supper. Dr. Van Bokkelen talked with me. I brought him home in carriage. Thursday, June 29th: After dinner walked over to see Louise Adsit at Mrs. Brown's. Came home. Mrs. Warren called me over to the house. Mr. and Mrs. Warren both walked home with me, and came in. Showed them the house. They stayed
124 a while. Ed Bell called, and after Mr. and Mrs. Warren went, he and I walked over to the Homœopathic Hospital fair about nine o'clock. Stayed only a few minutes and came home; sat on the piazza until nearly eleven, when he left. A lovely, moonlight night." Is that true?

A. Yes, sir.

Q. "Friday, June 30th: It rained. I went over to Mrs. Stevenson's. I took my two scrap-books. I came home and walked down to Allen street, and bought an evening paper. Played on the piano until bedtime. Saturday, July 1st. After lunch Fred telephoned me from the office to have Joseph come to him at half past three. He arrived at noon.'

Q. Then comes "Sunday, July 2d: After dinner Fred laid down on lounge in my room, while I read to him. Then took a drive. Came home, and Fred went down to club for an hour. Went into Mrs. Stevenson's for a few minutes, had lunch when Fred returned, and retired. July 3d, Monday: Fred came home at half past five. After dinner Fred and I took a drive to the park and stopped at Kate's for a few minutes. Then we drove down Main street and saw the decorations. Came home and retired about ten. Tuesday, July 4th: Fred, George and Harry came in time to see it (the procession). Fred went down to club. Alone after dinner, until after seven, when he came up in an open carriage with A. P. Wright. Went with him to Buffalo Club reception."

Q. How did those sheets come to be torn out of here taken out o the book?

A. I tore them out.

Q. For what purpose?

A. To send them to you.

Q. At whose request?

A. At yours.

Q. Now, Mrs. Bell, you heard Mr. Edward M. Bell testify here in reference to an occasion which he claims that he stayed one night with you?

A. Yes, sir.

125 Q. Was there ever any such occasion?

A. Never, never.

Q. Did you ever have any criminal intercourse with him, either on such occasion, or any other?

A. No, sir, never.

Q. Can you tell from this diary, by refreshing your recollection, the different times or dates that Mr. Bell called at your house?

A. Mr. Ned Bell?

Q. Yes.

A. Yes.

Q. Have you got a memorandum?

A. From that diary?

Q. Yes.

Q. Can you tell the dates?

A. Yes, sir. (Refers to memorandum.) "Sunday, January 15th; Sunday, January 29th; Saturday, February 4th; Wednesday, February 15th; Sunday, March 5th; Saturday, April 8th, Fred was away; Friday, April 15th, we went to see Rhea in 'Much Ado About Nothing.' Friday, April 21st; Fred arrived home early the next morning."

Mr. SEYMOUR: This is all under my objection.

"Tuesday, May 9th, we went to see the 'Two Orphans.' Thursday, June 29th, went to Homœopathic Hospital fair. Sunday, July 16th; Friday, July 21st, Monday, July 24th, when he ran in a few minutes to say good-bye; some young people were with him at the gate."

Q. Are those the only occasions he was there?

A. Yes, sir.

Q. From the first of January, 1882, up to August?

A. Yes, sir.

Q. Did Mr. Ed. Bell at any time, while you were living at this house on Delaware avenue, stay over night?

A. Yes, sir; I think he did.

Q. Do you remember when it was, about when?

126 A. Well, we had not been housekeeping very long, and I was so timid, being left alone so much, Mr. Bell's business seemed to take him away, and I spoke to him about it, and he said, "You need not be afraid, because I will always get some of the boys to stay nights, if you are afraid to stay alone."

Mr. SEYMOUR: This is all under my objection.

Q. Was that prior to January 1st, 1882?

A. Yes, sir.

Q. Can you also state, from an examination of your diary, the dates and times when Mr. Bell was away, and the dates of his return?

A. Yes, according to my memory, being refreshed by my diary, I made a copy of that this morning.

Q. Go on and state during the year 1882. What memorandum have you there?

Objected to by defendant's counsel, on the same grounds as before.

A. I copied this from my diary: "Monday, January 5th, 1882: Went to Rochester, and returned the 7th, Saturday. Wednesday, January 18th: Went to mines and returned Saturday, 21st. Thursday, January 26th: Went to Rochester and returned Saturday, the 28th. Wednesday, February 1st: Went to Rochester, Philadelphia and New York, and returned Thursday, February 9th. Monday, February 13th: Left for mines and returned Wednesday February 15th. Monday, February 20th: Left for Montreal, returned Wednesday, March 1st. Thursday, April 6th: Left for mines and returned Monday, April 10th. Saturday, April 14th: Left for Rochester, returned Sunday, April 15th. Thursday, May 4th: Left for mines and returned Thursday, May 11th. Monday, May 15th: Left for Rochester and returned Wednesday, 17th. Thursday, May 18th: Left for mines and returned Saturday, May 20th.
127 Thursday, June 15th: Left for Rochester and returned Friday, June 16th. Monday, June 19th: Left for New York and returned Friday, June 23d. Wednesday, July 19th: Left for Rochester and returned at 7.40 the same evening. Friday, July 21st: Left for mines and returned Wednesday, July 26th. Friday, July 28th: Left for Rochester and returned the same evening. Friday, August 11th: Left for Rochester.

Q. Does that give all his visits and times?

A. I believe so, according to my diary.

A recess was here taken until May 21st, 1895, at 10 a. m.

Proceedings of Tuesday, May 21st, 1895, 10 a. m.

Cross-examination by Mr. SEYMOUR:

I made these entries on the day they occurred, the same day. Sometimes at the end of the day, sometimes at noon and sometimes in the afternoon, generally before I retired in the evening. I kept a journal part of the time in 1881, and I think I did in 1880 and in 1879; it was my custom to keep a diary. It was almost, if not fully, one year before I went to Bloomington for good, in September, 1882, that Mr. Bell and I had ceased to live as man and wife, I went home about the first of September, 1882, so a year backward from that date would be about the first of September, 1881.

Mr. SEYMOUR: It appearing by the proof that the adultery alleg to have been committed by the plaintiff with Edward M. Bell curred at some other date than as alleged in the amended answe move to have the amended answer amended, by having the wo "or some time in the spring of 1882" added after the allegati that the adultery occurred in June.

Plaintiff's counsel objected. Amendment allowed by the co

128 FRANK T. WILLIAMS, sworn for plaintiff, testified:

I am an observer in the Weather Bureau in the city of B falo, and have been stationed here since 1881. I was here in 18 I have here the record of all the observations from 1880 to 1885, t state of the weather, the temperature, and the like of that, and atm pheric conditions, made at the White building, in the city of B falo. The maximum temperature for Saturday, April 8, 1882, w 51, the minimum 38. It was generally pleasant; had no rainfall all. Friday, April 14th, maximum temperature was 38, minimu 33; had a light snow from 2.45 to 5.30 p. m., too small to measu Friday, April 21st, maximum 43, minimum 36. There was ra on the 21st; greatest quantity occurred during the night record at 7 o'clock in the morning. There was a trace of rain in the fo noon, at 10.10 to 10.20, that was too small to measure. No m rain that day. It cleared up that night. On Tuesday, May 9 maximum was 63, minimum $46\frac{1}{100}$ of rain recorded, that occurr during the night between eighth and ninth. Then we record unappreciable rain falling from 3.50 to 3.55 p. m. There was more rain that day. Thursday, June 9th, maximum 73, minimu 58. It was a fair day, without rain at all for entire 24 hours. Su day, July 16th, maximum 80, minimum 59. It was fair, witho any rain. These records are from 11 o'clock at night to 11 o'clo the following night. Friday, July 21st, maximum was 70, mi mum 61. There was a trace of rain from 6 to 6.10 a. m. That w the only rain for the day. Monday, July 24th, maximum 74, mi mum 67. It was clear, no rain at all.

129 Cross-examination by Mr. SEYMOUR:

It often occurs that there is a brisk shower in Black Rock and n shower here, and it is very true that a shower will occur in th upper part of the city and no shower at the White building, an unless the rain was falling upon the White building, where ou apparatus is, we would have no indication of it.

It is admitted by the defendant that the original answer allege "adulteries" on the part of the plaintiff.

Counsel summed up. At the close thereof the following pr ceedings occurred:

Mr. SEYMOUR: I ask leave to open defendant's case, and call M Bell, and I offer to show by him that he did not read the joint pet tion for the probate of his mother's will, signed by himself and hi sister. I also offer to show that he was told by his attorney, wh drew the petition, that it simply stated the facts of his mother'

death, residence, etc., and that he did not know that it contained any reference to his own residence; that he would not have made the affidavit had he known the petition stated he was a resident of this State, because such was not the fact.

Mr. WHEELER: I object on the ground that it is not for the defendant to open his case at this time and also on the ground that under the provision of the code defendant would not be a competent witness.

By the REFEREE: If I thought it were of any importance in defendant's case, I would allow you to open it, but I do not think the testimony of any importance. I also sustain plaintiff's objection on the ground that the testimony included in the offer is incompetent, but not on the ground that it is too late.

Exception *to* defendant.

130 The foregoing is all of the evidence taken, and the proceedings had upon said trial, and because none of the same do appear upon the records of this court, the defendant has caused this case to be made to the end that it may be fully considered by this court; and it being settled as above, it is hereby ordered to be filed in the office of the clerk of the court.

SPENCER CLINTON, *Referee.*

January —, 1896.

Supreme Court, Erie County.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

It is hereby stipulated by and between the attorneys for the respective parties hereto that the foregoing copy of the pleadings, case containing exceptions, and of the judgment-roll, opinion and findings of the referee, and exceptions to said findings, judgment and notice of appeal to the general term, are true copies of said originals now on file in the office of the clerk of the county of Erie.

Dated January 18, 1896.

HENRY H. SEYMOUR,
Attorney for Appellant.
CHAS. B. WHEELER,
Respondent's Attorney.

131 Supreme Court, Appellate Division, Fourth Judicial Department.

CLERK'S OFFICE, ROCHESTER, N. Y.

I, Newell C. Fulton, clerk of the appellate division of the supreme court, in the fourth judicial department, do hereby certify that the foregoing is a copy of the order made by said court upon the appeal in the above-entitled action or proceeding, and entered in my office on the eighteenth day of April, 1896, and that the original case or papers upon which said appeal was heard are hereunto annexed.

In witness whereof, I have hereunto set my hand and
[L. S.] affixed the seal of said court, at the city of Rochester, this twenty-third day of April, 1896.

NEWELL C. FULTON, *Clerk.*

132 At a term of the appellate division of the supreme court, held in and for the fourth judicial department, at the city of Rochester, on the 18th day of April, 1896.

Present: Hon. George A. Hardin, presiding justice; Hon. David L. Follett, Hon. William H. Adams, Hon. Manly C. Green, Hon. Hamilton Ward, associate justices.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant. } Order of Affirmance on Appeal from Judgment.

The above-named Frederick A. Bell, appellant in this action, having appealed to the appellate division of the supreme court, from a judgment of the supreme court entered in the office of the clerk of the county of Erie, on the 3d day of July, 1895, and the said appeal having been argued by Mr. Henry H. Seymour, of counsel for the appellant, and by Mr. Charles B. Wheeler, of counsel for the respondent, and due deliberation having been had thereon: It is hereby ordered and adjudged that the judgment so appealed from be and the same *are* hereby affirmed; and the respondent recover of the appellant the cost of this appeal.

Opinion by Follett, J.

[L. S.] NEWELL C. FULTON, *Clerk.*

133 Supreme Court.

MARY G. BELL, Plaintiff and Respondent,
against
FREDERICK A. BELL, Defendant and Appellant. } Judgment.

The defendant, Frederick A. Bell, having appealed to the general term of the supreme court for the fourth judicial department, from a judgment entered in the above-entitled action, in the office of the clerk of the county of Erie, on the 3d day of July, 1895, in favor of the plaintiff Mary G. Bell, and against the said defendant Frederick A. Bell; and said appeal having been brought to a hearing upon a case containing exceptions, at a term of the appellate division of the supreme court for the fourth judicial department, held at the city of Rochester, on the 4th day of March, 1896; and said appeal having been argued and submitted, and said court having, on the 18th day of April, 1896, handed down its decision affirming said judgment with costs, and entered its order to that effect:

Now, therefore, upon filing the remittitur from said court in accordance with said decision, and upon motion of Charles B. Wheeler, Esq., attorney for the respondent, it is hereby ordered, adjudged and decreed, that the said judgment so appealed from in this action, signed and entered on the 3d day of July, 1895, in the

office of the clerk of the county of Erie, be and the same hereby is in all things affirmed.

And it is further ordered, that the said respondent, Mary
134 G. Bell, recover of and from the appellant, Frederick A. Bell, her costs of said appeal, which have been taxed and adjusted at the sum of ninety-nine dollars and eighty-five cents ($99.85), and that she have execution therefor.

Judgment signed this 28th day of April, 1896.

F. B. STEELE, *Dep. Clerk.*

Supreme Court.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

SIR: You will please take notice that the annexed is a true copy of a judgment, on this 28th day of April, 1896, filed and entered in the office of the clerk of Erie county.

Dated, Buffalo, April 28, 1896.

CHAS. B. WHEELER,
Attorney for Plaintiff and Respondent, 117 Erie County Savings Bank, Buffalo, N. Y.

To H. H. Seymour, Esq., attorney for the defendant and respondent, 12 Hayen bldg., Buffalo, N. Y.

135 Supreme Court, Fourth Appellate Division.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

Argued March 4; decided April 18, 1896.

Hardin, P. J.; Follett, Adams, Green, and Ward, associate justices.

Appeal from a judgment of divorce on the ground of adultery, entered on the report of a referee.

December 22, 1894, this action was begun by the personal service of the summons and complaint on the defendant at the city of Buffalo, for the purpose of obtaining a judgment of divorce on the ground of his alleged adultery. The defendant appeared and filed an answer, in which he denies the commission of the acts of adultery alleged in the complaint, and sets up two affirmative defences: (1) That on the 8th of January, 1895, the marriage of the parties was dissolved by the court of common pleas, in the county of Jefferson, in the State of Pennsylvania; (2) that at a time and place mentioned the plaintiff committed adultery, which is set up as a defence and as a counter-claim. The plaintiff replied to the answer, denying the allegations of adultery therein, and alleged that neither she or her husband was ever a resident or citizen of the State of Pennsylvania, that she was not served with process in the action in Penn-

sylvania, did not appear therein, that the court never acquired jurisdiction of the parties, and that the judgment entered was void and of no effect as between them, for the want of jurisdiction.

136 The issues were referred to a referee to hear and determine, who reported that the defendant had committed adultery as alleged in the complaint, but that the plaintiff had not, as alleged in the answer. It was also found that when this action was begun both of the parties were residents of this State, and that the defendant in this action was not a resident of the State of Pennsylvania while his action was being prosecuted in that State, but was a resident of New York, and that the defendant in that action, the plaintiff in this, was not served with the process in Pennsylvania and did not appear in the action. Upon these facts and on evidence of the value of the defendant's estate, and the amount of his annual income, a judgment of divorce was granted to the plaintiff with alimony at the rate of three thousand dollars per year.

January 24, 1878, the litigants were married at Bloomington, Ill., at which time the plaintiff resided at that place, and the defendant at the city of Rochester, N. Y. For about two years after their marriage they resided at Rochester and then moved to Buffalo, where they lived as husband and wife until September, 1882, when the plaintiff left the residence of the defendant and returned to the home of her mother at Bloomington, Ill. From September, 1882, until November, 1894, she lived with her mother at Bloomington, except during that period she went on three occasions to Europe, at one time remaining thirteen months. In November, 1894, she and her mother went to Brooklyn, where they remained until March, 1895, when the plaintiff took up her residence at the Cambridge, in the city of New York, where she has since resided.

April 9, 1894, the defendant in this action began an action 137 in the court of common pleas of Jefferson county, Pa., against the plaintiff in this action for a divorce, alleging as a ground that he was a resident of that State and that she had deserted him. An original subpœna was issued on the 10th of April, 1894, to the sheriff, who made return that the defendant could not be found. On the 17th of May, 1894, an *alias subpœna* was issued and delivered to the sheriff, who in September, 1894, returned that the defendant could not be found. On the 14th of September, 1894, a *pluries subpœna* was issued requiring the defendant to show cause on the second Monday (10th day) of December, 1894, why a divorce should not be granted. This subpœna, pursuant to an order of the court, was published for four successive weeks in the Brooklyn *Republican* in the issues of October 17, 1894, October 20, 1894, October 31, 1894, and November 7, 1894. December 1, 1894, the *pluries subpœna* was enclosed in a postpaid envelope and addressed, "Mrs. Mary G. Bell, Bloomington, Ill.," and deposited in the post-office at Reynoldsville, Pa., which was duly received at Bloomington, Ill., and forwarded by the post-office authorities to the plaintiff at Brooklyn, N. Y., where she received it December 4, 1894. The same day on which the *pluries subpœna* was mailed to the plaintiff, the examiner appointed to take evidence in the case mailed a notice to

her at Bloomington, Ill., that he would attend to the duties of his appointment December 4, 1894, which notice she received at Brooklyn, N. Y., December 4, 1894, the day appointed to take the evidence.

In December, 1894, the evidence offered by the plaintiff in that action was taken before the examiner, who reported it to the court, and January 8, 1895, a judgment was entered by the court of common pleas of Jefferson county divorcing the litigants. This
138 judgment was entered seventeen days after the service of the summons and complaint in the case at bar.

Henry H. Seymour, for appellant.

Charles B. Wheeler, for respondent.

FOLLETT, *J.*:

The plaintiff not having been personally served with process, and never having appeared in the action prosecuted in the court of common pleas of the State of Pennsylvania, had the right to attack the judgment rendered by that court on the ground that it never acquired jurisdiction over her, and also on the ground that the plaintiff in that action was not a citizen of Pennsylvania, and it was competent to support her contention by oral and documentary evidence. The recitals in the Pennsylvania judgment were not conclusive nor binding on her. (*Thomas vs. Whitman*, 18 Wall., 457; *Kerr vs. Kerr*, 41 N. Y., 272; *Cross vs. Cross*, 108 *id.*, 628; *Rigney vs. Rigney*, 127 *id.*, 408; *Vanfleet Col. Attack*, 388, 389 *and cases cited.*) It is not asserted that the plaintiff in this action ever resided in Pennsylvania, or that she was personally served with process on that State, or that she appeared in that action, and the evidence is ample to sustain the finding of the referee that the defendant in this action was not a resident or citizen of Pennsylvania, but went there solely for the purpose of instituting and prosecuting his suit for a divorce.

These facts being well found, it is settled by a long line of authorities in the courts of this State, that the judgment of the court of common pleas of Pennsylvania is not binding on the plaintiff and is not a bar to her action for a divorce. (*Kerr vs. Kerr*, 41 N. Y., 272; *Kinnier vs. Kinnier*, 45 *id.*, 535; *Hoffman vs. Hoffman*,
139 46 *id.*, 30; *People vs. Baker*, 76 *id.*, 78; *O'Dea vs. O'Dea*, 101 *id.*, 23; *Jones vs. Jones*, 108 *id.*, 415; *Cross vs. Cross*, 108 *id.*, 628; *Rigney vs. Rigney*, 127 *id.*, 408; Rev., 160 U. S., 531; *Williams vs. Williams*, 130 *id.*, 193; *Atherton vs. Atherton*, 82 Hun., 179.)

It was shown that the defendant has an estate of the value of more than three hundred thousand dollars and is in receipt of a large annual income. During the married life of these parties the defendant owned, and they occupied, an expensive home, handsomely furnished; kept horses, carriages, a butler, a coachman and a number of servants, and the sum allowed to the plaintiff for alimony, with the income of her estate, will not enable her to live in the same style and position that she did during her married life. The defendant gave no satisfactory evidence of the amount of his estate, and we think the estimate of the referee of its value and of

defendant's income a conservative one, and that the sum allowed for alimony is not excessive.

The judgment should be affirmed with costs.

All concur.

Supreme Court, Erie County.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

SIR: Take notice that the said defendant hereby appeals to the court of appeals from the decision of the appellate division
140 of the supreme court, for the fourth department, made on the 18th day of April, 1896, herein, and from the order and judgment entered thereon in this action in Erie county clerk's office, on the 28th day of April, 1896, affirming the judgment entered in this action on the 3d day of July, 1896, in the clerk's office of said Erie county, and that said defendant appeals from said order, and said judgment of affirmance entered thereon, and from every part thereof.

Yours, etc., HENRY H. SEYMOUR,
Attorney for Appellant, 11 *and* 12 *Hayen Bldg., Buffalo.*

To Charles B. Wheeler, attorney for respondent, Buffalo, and to the county clerk of Erie county.

STATE OF NEW YORK, } ss:
Erie County Clerk's Office, }

I, George Bingham, clerk of said county, do hereby certify that I have compared the annexed copy of a judgment, notice of entry and notice of appeal thereon, with an original judgment, notice of entry and notice of appeal entered and on file in this office, and find the same to be true transcripts of and from the said originals, and the whole of each thereof.

In witness whereof, I have hereunto set my hand and
[L. S.] affixed the seal of said county, at Buffalo, this twenty-fourth day of June, 1896.

GEORGE BINGHAM, *Clerk.*

141 STATE OF NEW YORK, } ss:
Erie County Clerk's Office, }

I, Otto H. Wende, clerk of said county, do hereby certify that I have compared the annexed copy of the order of affirmance on appeal from judgment, and the clerk of the appellate division's certificate thereto, with a certified order and a certificate attached to the judgment-roll in said action entered and on file in this office, and find the same to be true transcripts of and from the said originals, and the whole of each thereof.

In witness whereof, I have hereunto set my hand and
[L. S.] affixed the seal of said county, at Buffalo, this 13th day of January, A. D. 1898.

OTTO H. WENDE, *Clerk.*

142 STATE OF NEW YORK, *ss:*

Court of Appeals.

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 10th day of January, in the year of our Lord one thousand eight hundred and ninety-nine, before the judges of said court.

Witness the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur, January 10th, 1899.

MARY G. BELL, Respondent,
against
FREDERICK A. BELL, Appellant.

Be it remembered that on the 25th day of June, in the year of our Lord one thousand eight hundred and ninety-six, Frederick A. Bell, the appellant in this action, came here into the court of appeals, by Henry H. Seymour, his attorney, and filed in the said court a notice of appeal and return thereto from the order and judgment of the appellate division of the supreme court in and for the fourth judicial department; and Mary G. Bell, the respondent in said action, afterwards appeared in said court of appeals, by Charles B. Wheeler, her attorney; which said notice of appeal and the return thereto, filed as aforesaid, are hereto annexed. Whereupon the said court of appeals, having heard this cause argued by Mr. Henry H. Seymour, of counsel for the appellant, and by Mr. Charles B. Wheeler, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the supreme court appealed from in this action be in all things affirmed; and it was further ordered and adjudged that the respondent recover against the appellant costs of appeal to this court; and it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law. Therefore it is considered that the said judgment be in all things affirmed with costs, as aforesaid, and stand in full force, strength, and effect.

143 And hereupon as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and

which record now remains in the said supreme court, before the justices thereof, etc.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

Court of appeals, clerk's office.

ALBANY, *January 10th*, 1899.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

W. H. SHANKLAND, *Clerk.* [L. S.]

144 At a special term of the supreme court held at the city and county hall, in the city of Buffalo, on the 13th day of January, 1899.

Present: Hon. Henry A. Childs, justice.

MARY G. BELL, Plaintiff,
ag'st
FREDERICK A. BELL, Defendant.

The defendant above named having heretofore appealed to the court of appeals of the State of New York from the judgment of the appellate division of this court made in this action, wherein and whereby said appellant division affirmed a judgment of this court made in this action and entered upon the report of Spencer Clinton, Esq., as referee, and said appeal having been argued and submitted to the court of appeals, and said court having, on the 10th day of January, 1899, rendered its decision and entered its judgment, wherein and whereby said court in all things affirmed said judgment appealed from with costs of said appeal:

Now, therefore, upon presenting and filing the remittitur herein from said court of appeals—

And on motion of Charles B. Wheeler, Esq., attorney for said plaintiff and respondent, it is ordered that the judgment of the court of appeals be, and hereby is, made the judgment of this court, and that said respondent, Mary G. Bell, recover of and from the appellant, Frederick A. Bell, her costs of said appeal, which have been taxed at the sum of one hundred and seventeen dollars and
145 eighty-five cents ($117.85), and that said plaintiff and respondent, Mary G. Bell, have execution therefor.

146 Supreme Court, Erie County.

MARY G. BELL, Plaintiff,
against
FREDERICK A. BELL, Defendant.

The defendant above named having heretofore appealed to the court of appeals of the State of New York from the judgment of the appellate division of this court made in this action, wherein and

whereby said appellate division affirmed a judgment of this court made in this action and entered upon the report of Spencer Clinton, Esq., referee, and said appeal having been argued and submitted to the court of appeals, and said court having, on the 10th day of January, 1899, rendered its decision and entered its judgment, wherein and whereby said court in all things affirmed said judgment appealed from with costs of said appeal, and the judgment of the court of appeals having been made the judgment of this court by an order entered this 13th day of January, 1899, and the costs of the plaintiff and respondent having been taxed at the sum of one hundred and seventeen dollars and eighty-five cents ($117.85):

Now, therefore, it is hereby ordered and adjudged that the plaintiff and respondent, Mary G. Bell, recover of and from the defendant and appellant, Frederick A. Bell, the sum of one hundred and seventeen dollars and eighty-five cents ($117.85) as and for her costs of said appeal, and that she have execution therefor.

Judgment signed this 13th day of January, 1899.

FRANK P. MARQUIS, *Dep. Clerk.*

STATE OF NEW YORK, }
Erie County, Clerk's Office, } ss:

I, Otto H. Wende, clerk of said county, do hereby certify that I have compared the annexed copy of record of appeal to the court of appeals, remitt-ur and judgment, and of all proceedings had and entered in the above cause and copy endorsements thereon with the originals thereof and *its* endorsements entered and on file in this office and find the same to be true transcripts of and from the said originals and the whole of each thereof; that attached thereto are the writ of errror, with allowance endorsed thereon; a copy of citation with acceptance of service endorsed thereon; a copy of the bond, and assignment of errors.

In witness whereof I have hereunto set my hand and affixed the seal of said county, at Buffalo, this 15th day of April, A. D. 1899.

[Seal Clerk's Office for the County of Erie, N. Y.]

OTTO H. WENDE, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled 4, 15, '99. O. H. W.]

147 UNITED STATES OF AMERICA:

Supreme Court.

MARY G. BELL, Plaintiff, *against* FREDERIC A. BELL, Defendant.	At Law.	Petition for Writ of Error.

To the Hon. Rufus W. Peckham, associate justice of the Supreme Court of the United States:

Comes now the defendant, Frederick A. Bell, and says that on the 3d day of July, 1895, a judgment of the supreme court of the State of New York was entered in the clerk's office of the county of

Erie, in the said State, against said defendant in favor of the above-named plaintiff of absolute divorce, dissolving the marriage between the said parties and decreeing that the said defendant shall pay to the said plaintiff three thousand dollars per annum during her natural life, such payments to begin from the 22nd day of December, 1894, to be paid in quarterly installments of $750.00 each, together with the sum of $435.94 costs.

And that on the 13th day of January, 1899, an order was duly entered in the clerk's office of said county of Erie, in said State of New York, upon a remittitur from the court of appeals, which is the highest court of law and equity in said State of New York, affirming, without any opinion being written by said court of appeals, the said judgment of the supreme court of the State of New York as against this defendant, by which said judgment defendant was aggrieved, in that in said judgment and the proceedings had prior thereunto in this cause several errors were committed to the prejudice of this defendant, all of which will appear more in detail from the assignment of errors filed with this petition; wherefore defendant prays that a writ of error may issue to the supreme court of the State of New York or to the proper court for the correction of the errors complained of, and that a duly authenticated transcript of the record, proceedings, and papers herein may be sent to the said Supreme Court of the United States.

148 Defendant further says that these parties were married in Bloomington, Illinois, January 24, 1878; that in September, 1882, these parties then residing in the city of Buffalo, State of New York, the said plaintiff deserted defendant and returned to her mother's home, in said Bloomington, where she resided until November, 1894; that in the year 1894 the said defendant, being then a citizen of the State of Pennsylvania, began an action for absolute divorce against the said plaintiff in the court of common pleas in and for the county of Jefferson, in the Commonwealth of Pennsylvania, on or about the 9th day of April, 1894; that the hearing in said action was had on the 19th day of December, 1894, and that on the 8th day of January, 1895, a judgment was duly entered in the office of the clerk of said court in favor of said Frederick A. Bell and against Mary G. Bell aforesaid, dissolving the marriage between the said parties; that said defendant in said action was duly served with the process in said action and had notice thereof, but was not served within the State of Pennsylvania, nor did she appear in said action.

That in the latter part of the month of November, 1894, the said Mary G. Bell left the State of Illinois, and on the 22nd day of December, 1894, began the above-entitled action by service of the summons and complaint therein on said defendant in the city of Buffalo, in the State of New York; that as a defence to said action, under article four of the Constitution of the United States of America, this defendant plead as one of his defences the said judgment of divorce in his favor against the said Mary G. Bell of the court of common pleas of the county of Jefferson, in said State of

Pennsylvania, which said judgment was by the said New York decree held invalid in the State of New York.

149 Defendant further says that he is now a resident of Madison, in the State of New Jersey, and that the said plaintiff now is, as he is informed, living at the Murray Hill hotel in the city of New York.

FREDERIC A. BELL,
By HENRY H. SEYMOUR,
His Attorney.

STATE OF NEW YORK, }
County of Erie, } ss.:

Henry H. Seymour, being duly sworn, says that he has read the foregoing petition and knows the contents thereof, and that the same is true to the knowledge of deponent except as to matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true, and further states that all of the matters stated in said petition are within the personal knowledge of deponent.

HENRY H. SEYMOUR.

Sworn to before me this 1st day of February, 1899.
WILLIS H. MEADS,
Notary Public.

150 UNITED STATES OF AMERICA:

Supreme Court.

MARY G. BELL, Defendant in Error, }
against
FREDERIC A. BELL, Plaintiff in Error. }

The said plaintiff in error, Frederic A. Bell, by Henry H. Seymour, his attorney, now comes into the Supreme Court of the United States, and for assignment of errors herein says that in the record and proceedings and in the judgment in said cause there is manifest error in this, to wit:

I. That the supreme court of the State of New York erred and violated article 4 of the Constitution of these United States in holding and determining that the judgment in favor of said plaintiff in error against said defendant in error of the court of common pleas of the county of Jefferson, in the Commonwealth of Pennsylvania, duly entered in the office of the prothonotary of said court on the 8th day of January, 1895, divorcing and separating the said Frederic A. Bell from the nuptial ties and bonds of matrimony theretofore contracted between him and the said Mary G. Bell, was invalid in the State of New York, and thereby holding and decreeing that on the 3d day of July, 1895, in the said State of New York, that said judgment was invalid, and entering judgment in the clerk's office of the supreme court of the State of New York in and for the county of Erie, on said 3d day of July, 1895, in favor of said Mary G. Bell against said Frederic A. Bell, dissolving the same

marriage tie theretofore dissolved by the said judgment of the said court in the Commonwealth of Pennsylvania; that said last-named judgment rendered in the supreme court of the said State of New York in this case and duly affirmed by the court of appeals of said State, it being the highest court of law and equity in said
151 State in which a decision could be had in said case, should be reversed for the reasons following, namely: That the said judgment of the supreme court of said State is repugnant to article four of the Constitution of the United States of America, which provides that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State," and contrary to the act of Congress of May 26, 1790, which provides that "the said records and proceedings authenticated, as aforesaid, shall have such faith and credit given them in every court within the United States as they have by law or usage in the courts of the State from whence the said records are or may be taken."

There is error also in this, to wit: That by the record aforesaid it appears that the judgment aforesaid was given for the said Mary G. Bell against the said Frederic A. Bell, whereas by the law of the land the said judgment ought to have been given for the said Frederic A. Bell against the said Mary G. Bell, and the said Frederic A. Bell prays that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings and the matters herein set forth in said cause, may be reversed and held for nothing, and that he may be restored to all things which he may have lost by occasion of said judgment.

HENRY H. SEYMOUR,
Attorney for Plaintiff in Error.

152 STATE OF NEW YORK, }
Erie County. }

Supreme Court.

MARY G. BELL, Resp'd't, }
against }
FREDERIC A. BELL, App'l't. }

Whereas on the 3d day of July, 1895, in the above court, the above-named respondent, Mary G. Bell, recovered a judgment against the above-named appellant, Frederic A. Bell, of absolute divorce, together with three thousand dollars per annum alimony, to be paid quarterly, from the 22nd day of December, 1894, by the said Frederic A. Bell to the said Mary G. Bell, together with $435.94, costs and disbursements; and whereas said judgment has been duly affirmed by the appellate division of said supreme court and judgment of affirmance duly entered thereon in said clerk's office; and whereas said judgment has been further affirmed by the court of appeals of the State of New York and its judgment having been duly made the judgment of the said supreme court by an order thereof entered in the clerk's office of Erie county on the 13th day of January, 1899;

And whereas the above-named Frederic A. Bell, feeling aggrieved thereby, intends to appeal therefrom to the Supreme Court of the United States: Now, therefore, I, Katherine B. Lewis, residing at number 656 Seventh street, in the city of Buffalo, county and State aforesaid, do hereby, pursuant to the statute, *do* undertake that the said appel-ant shall pay all costs and damages which may be awarded against him on said appeal not exceeding thirty thousand dollars, and that said appellant shall pay the said judgment if the said judgment shall be affirmed on said appeal—that is to
153 say, the said sum of three thousand dollars per annum, payable quarterly in each year from the said 22nd day of December, 1894, with interest thereon, together with all of the said taxable costs on said judgment, both in the State of New York and on the aforesaid appeal, and also in like manner undertake that if the judgment appealed from or any part thereof is affirmed or the appeal is dismissed the appellant will pay the sum recovered or directed to be paid by the judgment or the part thereof as to which it is affirmed, with the costs, as aforesaid.

KATHERINE B. LEWIS.

Dated Buffalo, January 23d, 1899.

STATE OF NEW YORK, } ss:
County of Erie, }

On this 23d day of January, 1899, before me, the subscriber, personally appeared Katherine B. Lewis, to me known to be the same person described in and who executed the within instrument and who acknowledged that she executed the same.

CHARLES B. SEARS,
Notary Public in & for Erie Co., N. Y.

STATE OF NEW YORK, } ss:
County of Erie, }

Katherine B. Lewis, being duly sworn, says that she is a resident of and a freeholder within this State, and that she is worth the sum of $30,000.00 over and above all the debts and liabilities which she owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

KATHERINE B. LEWIS.

Subscribed and sworn to before me this 23d day of January, 1899.

CHARLES B. SEARS,
Notary Public in & for Erie Co., N. Y.

Approved:
R. W. PECKHAM,
Associate Justice Supreme Court U. S.

Feb'y 3, 1899.

154 I hereby accept the within undertaking, both as to the form and as to the sufficiency of the surety executing same.

CHAS. B. WHEELER,
Att'y & Counsel for Mary G. Bell, Def't in Error.

Buffalo, January 25th, 1899.

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155 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of New York, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court on a remittitur from the court of appeals of the State of New York, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between Mary G. Bell, plaintiff, and Frederick A. Bell, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the con-
156 struction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 3d day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

Feb'y 3, 1899.

157 UNITED STATES OF AMERICA, *ss*:

To Mary G. Bell, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New York, wherein Frederick A. Bell is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 3d day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

158 BUFFALO, *Feb.* 14, 1899.

I hereby admit due service of the within citation upon me this 14th day of February, 1899.

MARY G. BELL,
Def't in Error,
By CHAS. B. WHEELER,
Her Attorney and Counsel.

[Endorsed:] Clerk's office, Erie county, N. Y. Filed Feb. 20, 1899. 15-315.

159 STATE OF NEW YORK:

Supreme Court, Erie County.

MARY G. BELL
against
FREDERICK A. BELL.

It is hereby stipulated and agreed by and between the respective parties herein that the annexed and foregoing is a true and correct copy of the record and all proceedings had and entered in the above-entitled cause by said court, including the written decision and reasons therefor, signed by the judges of said court and filed in the office of the clerk of the county of Erie, as appears of record and on file in said cause, and that the same is a true transcript therefrom and of the whole thereof; that attached thereto are the writ of error, with allowance endorsed thereon, the citation, with acceptance of service endorsed thereon, a copy of the bond to the

adverse party filed with the writ of error, and the assignment of errors in the Supreme Court of these United States.

Dated Buffalo, Feb'y 21, 1899.

CHAS. B. WHEELER,
Attorney for Respondent.
HENRY H. SEYMOUR,
Attorney for Appellant.

160 Supreme Court, Erie County.

MARY G. BELL
against
FREDERICK A. BELL.

It is hereby stipulated on the part of the plaintiff and defendant in error that the above-named defendant and plaintiff in error shall have thirty days' additional time from and after March 3d, 1899, in which to file and docket the above-entitled cause in the Supreme Court of the United States.

Dated Buffalo, Feb. 20, 1899.

CHAS. B. WHEELER,
Attorney for Plaintiff and Defendant in Error.

The above time for the said plaintiff in error to file or docket the above case is hereby further extended until April 22nd, 1899.

CHAS. B. WHEELER,
Attorney for Pl'ff & Defendant in Error.

Dated March 31, '99.

Endorsed on cover: File No., 17,372. New York supreme court. Term No., 265. Frederick A. Bell, plaintiff in error, *vs.* Mary G. Bell. Filed April 17th, 1899.